

LABOR PROBLEMS IN AMERICA

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° ° ° ° ° ° P R E F A C E

DURING the past decade so many changes have occurred in the American scene which affect labor that a new statement of our labor problem appears justifiable. As these problems become more pressing, increasingly it is government which undertakes to deal with the difficulties facing workers, both employed and unemployed. Long-run and short-run policies are constantly being formed not only in the offices of employers and trade-unions but also in legislative halls.

This book undertakes to examine the world of labor and to study its problems in order to give the student an understanding of the background of these policies and their implication for American workers. In doing so afresh, emphases have been changed, for the events of the past few years have served to subordinate some topics which formerly bulked large in textbooks, and to magnify others. The authors' primary purpose has been to present a rounded picture of the American industrial worker and his world, viewing them from the standpoints of the worker himself, the employer and the government.

Book I deals with the more important labor problems, whose nature and extent are determined in large part by the institutional factors in the environment.

The chief problems facing American workers are, first, the widespread insecurity which characterizes our industrial society, and, second, the failure to secure what the worker feels to be "a living wage." Analyzing insecurity,

we note that the worker's income is constantly subject to interruptions caused by unemployment, accidents, disease, and old age.

Students of labor problems have long considered the question of "a living wage" without agreeing on its meaning. Workers and employers certainly do not agree on any specific wage that fills this requirement. Rather, workers seem to be motivated by a constant urge to improve their condition while employers are reluctant to grant the necessary concessions. Here is one of the causes for strikes, boycotts, and other forms of industrial conflict.

Besides insecurity and wages, we must consider hours of work, long a bone of contention between men and management, and the position of certain special groups such as women workers, child workers, Negroes, and immigrants, whose problems are important not merely for the members of these groups but also for the great body of workers facing their competition.

Book II traces the development of the labor movement in the United States. As soon as wage earners engage in organized activities to improve their condition it can be said that a labor movement exists. From this point of view, the American labor movement has had a continuous life from the closing years of the eighteenth century. Like all other labor movements, the American has manifested itself in many forms and has had a wide range of objectives. Some of the efforts of labor are designed to bring immediate improvement in workers' wages; others are justified by the benefits which they aim to secure in the future. Some labor organizations seek primarily to displace capitalism; others accept the process of bargaining with capitalism in one way or another.

In America, as elsewhere, the labor movement has, in the course of its history, moved along three different paths—the economic, the political, and the co-operative. On occasion labor has sought to attain its goals in all three ways at once; at other times it has emphasized one almost to the point of obscuring the others. In the United States labor activities have more frequently found expression in trade-union—that is, economic—rather than political or co-operative efforts.

The nature of the existing capitalist economy and the stage of technological development determine in broad outline the shape of the labor movement. The particular forms, the goals, and the intensity of the movement are, however, also conditioned by other factors. The business cycle, the ethnic and religious composition of the working class, the type of labor consciousness which obtains, the political institutions and the system of legality all play a part in influencing the activities of labor.

In Book III we discuss the contemporary situation in the American trade-union movement. When in 1931 the American Federation of Labor

celebrated its fiftieth anniversary, the optimistic expressions of its leaders sought only to cloak the desperate plight of the organization. Trade-unionism in America, never a very potent force, was at an ebb. The affiliates of the Federation, handicapped by structural defects and by internal conflict, had failed to master the problem of organizing the basic industries. There the struggle had been a most uneven one. Large corporations, possessed of great economic power, had employed many old and some new weapons to make impossible the growth in America of a substantial and vigorous labor movement. The aging leadership of the Federation seemed inept and bewildered.

By the end of the nineteen thirties, new life had been infused into the labor movement. Leading mass-production industries had been organized. Labor had shown itself to be a potent political force. New leaders had emerged and many old leaders had increased in militancy. Labor was on the march.

The role of the employer in labor problems is discussed in Book IV. Books on labor problems customarily pay scant attention to the employer except to depict him as the adversary against whom organized labor contends, usually unsuccessfully. Actually, the employer plays a much more significant part. Indeed, for many of our largest employers the activities of organized labor have had distinctly less importance than have their own "labor problems," often unrelated to unionism. These problems have arisen out of the nature of modern production and the modern large-scale business unit. What are these labor problems of the employer?

To the employer, labor is necessary as a factor of production, a factor which must be purchased on desirable terms. The employer wants capable workers at wages which do not interfere with profits. A large part of the employer's labor problems thus consists of getting a satisfactory working force at wages he is willing to pay and keeping this force as long as he needs it.

Getting a satisfactory working force involves analysis of the jobs to be filled, knowledge and utilization of desirable sources of labor supply, and proper testing, training, and placing of the worker. Incentive wages are introduced to give an adequate checkup on the worker's productivity and stimulate him to greater efforts. Other devices, developed to create in the worker a feeling of loyalty to the enterprise, are profit sharing, bonus, employee stock-ownership, and savings plans. And, to protect the worker against insecurity, some employers have installed elaborate programs for the prevention of accidents, disease, or unemployment, or plans providing for compensation in the event of injury, sickness, old age, or unemployment. There are numerous nonmonetary features of employers' labor programs which affect the social, cultural, and recreational aspects of the worker's life.

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At the same time, employers have not ignored the existence and activities of trade-unions. Antiunion discrimination, labor espionage, and violent professional strikebreaking have featured the activities of the most hostile employers so that, in some instances at least, conflict between union and employer has assumed some of the aspects of civil war.

This war calls forth the intervention of government, and the various aspects of its intervention are described in the first half of Book V. Each side in using violence claims that the other side began it. Traditionally, it has been the employing side which has been able to secure the help of the police against the possible violence of striking unionists; typically unions have had no redress against intimidation by company guards. In some cases even peaceful attempts at unionization have been banned by governmental aid to employers or by governmental tolerance of company repression. And in boycotts and other potentially powerful union maneuvers, peaceful methods have been interdicted where judges disliked unions. In recent years some of the employers' reliances on the law have been weakened by court decisions which have held unconstitutional ordinances which limit unions' freedom of speech and press, as well as by laws restricting the use of antilabor injunctions. Organized labor has recently received another form of aid through "labor relations laws." These laws grant employees and unions some legal remedies against employers who use against unions the weapon of discriminatory discharge or who refuse to confer with a union which has a majority in the shop. Some governmental agencies mediate in labor negotiations and suggest arbitration where a strike might otherwise be called.

The second part of Book V continues the discussion of government's relation to labor problems by analyzing the functions of protective labor legislation. State laws limiting child labor, raising wages, and shortening hours are seen to have improved the bargaining position of workers in a number of ways. When deep depression called forth stricter regulation it was in the form of federal legislation, a device calculated to overcome some of the frictions which had slowed down the expansion of regulation in the several states. While workmen's compensation insurance had spread throughout the states without federal pressure and old-age assistance had begun to be adopted, old-age and unemployment insurances were introduced much more rapidly because of the wider area covered by the powers of Congress. Because of these examples it was proposed that government health insurance be based on federal legislation, presumably in the form of grants in aid to the several states not dissimilar to the unemployment insurance scheme. These various types of social insurance have considerably reduced the insecurity of industrial workers which was described in Book I, but in an irregular fashion. This piecemeal character of American social security

is seen in the different degrees of protection extended to families who happen to be subjected to misfortunes of one kind or another, to be living in different places, or to be engaged in different employments.

The volume ends with a brief description of foreign labor movements. It has been the usual practice in books on American labor problems to exclude any extended treatment of labor problems in other countries. With few exceptions foreign experience has been dealt with only by occasional references to European experiments in social insurance, or to the legal status of unions, or to the socialist philosophies of European labor organizations.

This omission has been due partly to the lack of space in textbooks and to the belief that only a limited amount of subject matter can be treated adequately in one course. It has been due also to the fact that many people have assumed that the American economy developed out of a totally different background and therefore the problems of wage earners in the American scene were essentially different. From this point of view comparative studies of labor problems and labor movements are of secondary importance.

The trend of recent events has dramatized certain historical parallels which have been becoming more and more obvious since the turn of the century. It has become evident that essential problems and conditions of wage earners under the institutions of private capitalism at a given stage of development bear a singular resemblance to each other, although they may be widely separated in time and space.

Book VI is designed to give to the student a brief survey of the course of labor developments in a selected number of countries. Comparisons and contrasts with the developments in the United States are made at certain points, but in general the reader is left to make his own estimates of the significance to American workers of the evolution in the technique of industrial relations as demonstrated in the European scene where the impact of noncapitalist institutions has produced vital changes.

The task of editing the manuscript devolved on Emanuel Stein with the assistance of Jerome Davis. Henry David edited the chapters written by the late Edward Berman and acted as consulting editor throughout, making numerous valuable suggestions as to the form and content of all parts of the book. We wish to express our appreciation to the many others who read portions of the manuscript and suggested worth-while changes.

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May, 1940

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BOOK
ONE • • • WORKERS' PROBLEMS
AND
MODERN INDUSTRY

THE LABOR 1 PROBLEM

HOW DOES IT AFFECT US?

IF WE look about us, we see hundreds or thousands of different occupations ranging from the most completely unskilled work, which requires perhaps nothing more than a moderately strong back, to the highly technical work of the surgeon or the engineer. These occupations often appear unrelated and it seems sometimes that the individuals engaged in one occupation have little connection with those pursuing other occupations. In reality, they are all parts of the same integral whole—the economic system. For the system to function effectively, it is vital that each part perform its function well. All the advantages resulting from the subdivision of tasks and the specialization of labor would be completely lost if the specialists, each pursuing his own calling, did not at the same time function as parts of a gigantic team. With virtually no exceptions, everybody in the United States is dependent in greater or lesser degree upon the proper co-ordination of the functions of the men and women who are workers. The food, the clothing, and the shelter, not to mention the so-called luxuries, which we use in our everyday existence—or would like to use—are produced for us by others, and we in turn, unless we derive our entire income from investments, use our labor and our services in the production of goods for these others. An industrial nation may be compared to a very delicate watch or a highly developed precision machine whose effective functioning depends upon the proper co-ordination of all

its parts. A slip or a breakdown in any section is almost certain to have immediate repercussions elsewhere. Whether we are successful in securing the necessities and the luxuries we desire will turn upon the question of whether others are willing to receive our goods and services and are able in turn to give us theirs upon terms which are mutually satisfactory.

If there should be, for example, any shortage of skilled doctors and dentists, or for that matter, of automobile repair mechanics, we should either have to do without the services of these men, or pay a rather high price for such services as we are able to secure. If the coal miners in the bituminous regions go out on strike, the railroads discover that a considerable portion of their freight traffic has suddenly vanished, the steel mills are unable to secure coal, the automobile companies are unable to secure steel, and the general public is unable to secure automobiles. Or if, in these coal areas, a very high wage scale or a very low level of working hours should be established, the price of coal is almost certain to rise, with effects upon the rest of our economic system which are not obscure. Or consider the situation which would result if there should be a simultaneous withdrawal of labor power for only a few brief hours in the various parts of our economic mechanism. There would be no electric light or power, no gas, no subways, no taxicabs, no buses or trains, no restaurants, no groceries or other shops. The entire system would be paralyzed with enormous inconvenience to all, and the inconvenience would soon become a major calamity if the withdrawal were to continue for even as long as a day.

Let us look at the other side of the picture. Suppose it is difficult or impossible for a man to exchange his goods or services for the goods of others. In our society this would mean that he was unable to get a job at a money wage. If he cannot get a job he cannot get the purchasing power which will enable him to secure the food, clothing, shelter, and so on, which are necessary for existence. Hence, for the individual worker and his family, inability to sell labor in the market results in immediate distress. Moreover, since we are not reconciled to the idea of letting those starve who cannot provide for themselves, we are immediately faced with the question of what we are going to do to feed the hungry and clothe the needy. Or if the worker should have a job, but at a wage which does not secure him even a bare existence, we should still be faced with a serious question: Shall we ignore him entirely or shall we, considering the ultimate effects of his predicament upon the public welfare, take steps to improve his condition?

All this in effect means that what affects the worker affects society, and the problem is made more difficult by the great number of workers, who are, of course, themselves members of society. We have roughly fifty-four million men, women, and children in the United States who are "normally gainfully employed." Anything which is of serious concern to fifty-four

million or even to only a small portion of that number is a matter of serious concern to society as a whole.

WHAT IS THE LABOR PROBLEM?

In a sense the labor problem is the complex pattern of problems which arise in the process of production and distribution. Usually these problems originate in, or at least are aggravated by, the conflict over the control of the industrial process and the division of the products of industry between capital and labor. Human beings are so constituted that they desire and need for self-preservation food, clothing, shelter, and a host of other more or less indispensable material things. From prehistoric times men have labored and fought for the satisfaction of their wants. Since natural resources are not unlimited, a conflict of interest arises between those who have and those who have not, a conflict which extends to all aspects of the work relationship. The labor problem, therefore, is not one problem, but many, including wages, hours, conditions of employment, security, status—indeed, the unnumbered adjustments of industrial civilization.

In the last analysis these labor problems imply maladjustment in relation to wealth production and its distribution. The employers and the workers do not agree regarding the conditions of employment or the distribution of the money return. Both employers and workers want a larger share of the products of industry than they can have if they accede to the demands of the other. There is, consequently, an irrepressible conflict.

The conflict itself, or the issues into which this conflict may be resolved, cannot be understood, however, without an adequate knowledge of the particular society and its institutions. The legal system, the mores or folkways, the organization of productive enterprise, prevailing ideas concerning distribution of wealth and income, the teachings of religion, all can and do play a role in influencing the solution of these issues. Hence, if we would understand the problems of labor in the United States, we must keep in mind constantly the framework of our society, the setting in which the issues are fought out and determined.

PARTIES TO THE CONTROVERSY

Of course, the two immediate parties of interest are the employer and the worker. The employer, as owner of the enterprise, naturally requires the collaboration of the worker in the production of goods, or there would be no goods, no sales, no profits. On the other hand, the collaboration must be secured upon terms which permit the employer to sell his product for more than he has to pay to produce it. Thus even a very well-disposed

employer finds his area of discretion in dealing with his workers decidedly limited. No matter how kind he may personally be, he soon discovers, if he does not already know, that a wage bill which causes him to lose money on the sale of his merchandise soon leads to bankruptcy. This is not to say that many employers pay as much as they possibly can without incurring a deficit or cutting into what might be regarded as a fair margin of profit. Ours is a pecuniary society and one which is motivated largely by the pursuit of profits. Each employer tries to make as much as he can, and his relations with labor are likely to be guided by this consideration.

But who is the employer? In the case of a very small business employing only two or three men there is no question about his identity. He is the man who runs the establishment and works side by side with his men. When we come, however, to large-scale business we discover a very important difference between the theoretical employer and the actual employer. Theoretically, the corporation is the employer and the corporation itself is presumed to be an aggregate of possibly many thousands of stockholders scattered over the country or even the world who have chosen the corporate form as a convenient business device. In practice, however, the employer is the president of the company or the chairman of the board of directors, or some other such official who operates the plant through his managers, plant superintendents and foremen. The chief executive of the corporation is presumed to be chosen by, and directly responsible to, the large body of stockholders. Actually he is much more likely to be a sort of czar in his own domain, responsible only to certain banking or important industrial interests, if he is responsible to anybody. The chief function of such an executive is to produce profits, and his success or failure is determined largely by the size of the annual income or deficit. Indeed, deficits are about the only things which may cause the removal of an important corporation executive from office.

If the employer is motivated chiefly by profits, the worker is motivated chiefly by his desire for security and a "living wage." The individual's status in society and his ability to purchase those things which he regards as necessary to his station in life depend on the size of his wage and the steadiness with which he gets it. He lives in a society in which prestige is determined largely by the amount of money a man has or makes. The worker's only source of income, however, is his job and he tries to secure as much from that job as possible. Hence the worker is on the opposite side from the employer. He needs the employer, for without the employer there would be no job; yet collaboration with the employer must not be secured on terms which do not yield those satisfactions which the worker regards as essential.

There is a third party to the controversy—the public. It is obvious that strikes, lockouts, pickets, boycotts, and violence in labor disputes—not to mention unemployment, industrial accidents, and occupational disease—all

have the most serious implications for society. Even where there are no labor disputes the public may still be vitally concerned—as in cases where corrupt employers conspire with corrupt labor leaders to mulct the public.

THE SCIENTIFIC ATTITUDE

Another group interested in labor problems is made up of students who seek, through impartial analysis, to find out the facts of the labor problem. The methodology of science rests upon a thorough investigation of all the facts, their classification and division into logical groups, and finally the formulation of basic principles which describe a cause-and-effect relationship among these facts. Science also uses a method of reasoning from general assumptions to particular deductions. This method is full of pitfalls, since it lends itself to theoretical treatment without adequate reliance on tested facts.

In the fields of the social sciences problems are peculiarly complex, and precise quantitative analysis is difficult. Here bias is apt to warp judgments and influence decisions. We must therefore be on guard lest we reach conclusions too hastily or permit our prejudices to mislead us as to the facts. If we look, for example, at the question of the protective tariff or the question of monopoly or the question of the control of public utility rates and services, we become immediately aware of sharply divergent views, both as to the desirability and the feasibility of the particular measure proposed. Equally learned and equally competent publicists and scholars stand on opposite sides of these issues. This not only means that not all of the facts have been ascertained, but it also means—and this is much more serious—that the people in question have based their conclusions upon assumptions which in reality may be nothing more than mere prejudice. The controversies in the field of labor make the disagreement in other fields appear mild by comparison. As Justice Frankfurter wrote at the time of the heated controversy over the Adamson Act in 1916:

Nowhere is it possible to arouse feelings so deeply resentful or prejudiced as in the field of labor problems. Even men otherwise intelligent are apt to become unreasonable when confronted with the questions raised by trade unionism. The explanation is, of course, simple. We are dealing here not with premises or conclusions that are established beyond question, but with the fears and doubts of men. We have as yet no accepted test of right and wrong; and the scientific formulae which are to be the signposts of adequate opinion are as yet wanting. We have not even an adequate fund of experience. So that we are compelled to experiment. In the application of purposeful and probable hypotheses alone can there be the right to hope for knowledge.¹

¹ This originally appeared in an article in the *Boston Herald*, October 9, 1916. It has been reprinted in Archibald MacLeish and E. F. Prichard, Jr., *Law and Politics: Occasional Papers of Felix Frankfurter*. Harcourt, Brace and Company. New York. 1939. P. 203.

Take, for example, the question of the sit-down strike, which as a labor tactic in 1937 was comparatively novel in this country. People immediately took sides on the issue. Many argued that the sit-down strike was a fundamental invasion of the rights of private property and should be treated as such. Others, insisting that each labor tactic must be considered in the light of the times and of the objectives, asserted that property rights change and that they conceivably might change sufficiently to make a sit-down strike in an industrial establishment perfectly legal. They argued that a sit-down strike does not involve any actual injury to property and saves the loss of life which might occur if strikebreakers were brought in to take the place of men on the picket line. Still others, without taking sides on the relation of sit-down strikes to the law of property, were willing to permit it to be used. Of these several distinct attitudes, which is the correct one? Is there a correct one?

Unemployment insurance is widely hailed by some as an effective safeguard against the destructive harm worked by unemployment. Opponents of unemployment insurance insist that it will vitiate the morale of the recipients and will itself bring a greater evil than it removes. Which position is sounder?

Should workers be compelled to join trade-unions against their will? Some answer that the worker should be compelled to join a union if a majority of co-workers are union members; he participates in the benefits obtained by the union and ought therefore to share in the costs. Others charge that compulsion toward union membership is an invasion of the fundamental liberties guaranteed by the federal Constitution and should not be tolerated in a democratic society.

There is scarcely a single phase of labor's activities and problems on which there are not at least two distinct points of view. Whether it is merely a matter of the legal regulation of the hours of labor or of the rates of pay or a prohibition on the labor of children below a certain age, or whether it involves the question of union organization and union tactics, one finds clearly distinguishable points of view staunchly argued by numerous adherents. Often the point of view asserted and defended is merely the expression of a prejudice or conviction which has no basis in fact. Symbols are easily established and come to dominate our thinking. A student of labor problems must constantly be on the lookout lest he permit his emotions and prejudices to run away with him. He may not be able to remove his prejudices. He should, however, at least recognize them, and, keeping them constantly in mind, when he studies a particular question, ask himself, "Just what are my opinions on this subject?" "Are they well-founded?" "How far does prejudice influence my attitude?"

The student should also learn to distinguish clearly between fact and

rhetoric. It has long been observed in advertising that repetition makes reputation; if you repeat something often enough people will believe it. Since there are divergent opinions on labor problems, the student should weigh as carefully as he can the evidence advanced in support of the argument and discard as unworthy of notice those arguments whose only support is vehemence and vituperation. The phrase "labor racketeers" is an exceedingly common one in antilabor periodicals. What is the evidence? How extensive is labor racketeering? Are labor leaders indiscriminately referred to as racketeers in an attempt to disparage them and undermine their strength? Some of the criticism directed at John L. Lewis, head of the C.I.O., is revealing in this connection. He has been attacked for having political ambitions for himself and for using his position in organized labor to further those ambitions. Normally it has never been regarded as disgraceful for an American to aim at the presidency, or as uncommon for a man to use his own power and prestige to secure his political ambitions. But in Mr. Lewis's case the whole attack was based on the feeling that he would be utterly discredited if only people could be made to feel that he really had political ambitions.

All of the bitterness which surrounds labor controversies in these days, on both sides of the fence, serves to emphasize what has been said before in this chapter: the student cannot be too cautious in reaching conclusions and in examining the conclusions of others. Factual information, critical judgment, tolerance, objective reasoning, and intellectual independence are vital in the study of labor problems.

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QUESTIONS

1. Define the labor problem.
2. Name "the parties to the controversy." Do specific people you can name fit into one of these groups and not into another? Whose interests, if any, should be paramount? Why?

IO WORKERS' PROBLEMS AND MODERN INDUSTRY

3. What are the methods of science? How far can they be applied in studying labor problems?

4. Why are people more likely to be prejudiced in the field of labor problems?

5. Is your own outlook on the labor problem different from that of your father, for instance? If so, why? If not, why?

THE 2 . . . INSTITUTIONAL SETTING

NATURE and nurture are the two guideposts to the understanding of socio-economic problems like labor. Nature—the physical environment—sets broad limits to our activities. A temperate climate, a rich soil, abundant rainfall, large supplies of oil, coal, and iron may make possible an economy of abundance, while the lack of these advantages may make living one hardship after another. Nurture—our cultural heritage and our social institutions—determines our accomplishments within the limits set by nature; indeed, it may expand indefinitely the possibilities inherent in the physical environment. The two go hand in hand and must be kept constantly in mind, for they determine the structure and functioning of society in all its aspects.

Nature determines in a general way what occupations people pursue and whether the society as a whole can be rich or poor. The vast expanse of the continental United States, the enormously rich natural resources, and the great differences in climate within the United States have enabled Americans to engage in a great many different occupations (the United States Census lists over twenty thousand occupational classifications, though many of these are minor subdivisions) and provide the basis for the production of great wealth. We produce a large proportion of the total world supply of cotton, corn, wheat, coal, oil, iron, and innumerable other important commodities.

ECONOMIC FOLKWAYS

What we do with the gifts of nature is determined by our culture. Our economic, social, and political institutions play a vital part in determining

what kind of society we are to have; there is every reason to believe that if we had a different cultural background we should have an altogether different society even if the physical environment remained the same. The cultural background is especially important in the study of labor, for here we deal with "human factors" involved in the relations of one portion of humanity—the workers—to the rest. If we would understand American labor problems, we must first understand the social and cultural environment in which these problems exist. Space, of course, does not permit extended discussion of this subject or even the bare enumeration of all the significant factors. What follows is intended rather as an indication of the many items which should be kept in mind.

Profit-seeking society. Ours is a society in which the bulk of economic activity is motivated by the pursuit of profits. Merchant princes, captains of industry, magnates of finance, and the small manufacturer and shopkeeper are actuated alike by the desire for gain. The businessman may be a dutiful son, a loving husband, and a fond father, but in business his major, often his only, objective is the accumulation of profits. This is the case even where the profit maker gives away the larger portion of his profits to philanthropies of one sort or another. Profit making is an objective in itself. The man who makes money is a success; he who does not is a failure. We worship profits and idolize the man who makes them in large quantities, sometimes even to the extent of tolerating legal and ethical transgressions committed by a successful millionaire. Mr. Dooley, the sage of Archey Road, put his finger on one of our social attitudes when he advised, "Niver steal a dure-mat. If ye do, ye'll be invistigated, hanged, an' maybe rayformed. Steal a bank, me boy, steal a bank."¹

So important are profits that they outweigh questions of social advantage. It apparently makes little difference in social prestige whether people make money through the production of socially desirable goods or through selling defective, shoddy commodities. What counts is that they make it. Whether certain articles will be produced, whether certain projects will be furthered, will depend not on the usefulness of such articles or projects but on the profits which are expected to result.

Now profits are the excess of income over expense. Labor is an expense, and the seeker after profits must regard it so. Some employers may be kind and others mean, some generous and others stingy, but all alike are controlled by the relation of expense to income. Let the businessman ignore this by paying much better than average wages, for example, and he is likely to find profits disappearing and losses mounting. Upon profits, then, depend in large

¹ Finley Peter Dunne, *Mr. Dooley in the Hearts of His Countrymen*, Small, Maynard & Co. Boston. 1899. P. 40.

measure the answers to such questions as these: "Will workers be hired or discharged?" "What will be the rate of pay?" "Will the work be permanent?"

The habit of work. Historians who deal with the economic life of medieval and early modern Europe often tell us of the great number of holidays on which no work was done and of the large proportion of beggars to be found in the various cities. We take work for granted, we regard it as natural and its absence as deplorable, we say that "We have to work in order to eat." Yet most of us seldom weigh the alternatives; we work chiefly because the habit of work, the worth-whileness of work, and the odium attached to idleness have been inculcated in us from early childhood. Our schools, our religious institutions, our whole culture have made us feel that we ought to work if we possibly can.

However firmly fixed the work habit is in the American people, it can be lost through disuse. Without a large supply of willing workers, our whole industrial civilization must atrophy. It is this which is one of the most serious consequences of prolonged unemployment. People who have been out of work for years may become unemployable, may be unwilling to work and content to subsist on public or private benefactions.

A casteless society. We have in the United States no sharply demarcated fixed hereditary aristocracy; we have no princes, no dukes, no barons, no earls. Our "best families"—our "blue bloods"—whose claim to distinction is based much more often on wealth than on any other factor, have a comparatively short history. The granddaughter of a fur trader or a ferryman or a bookkeeper may become an arbiter of fashionable society. It takes only a generation or two for the vulgarity of newly acquired riches to disappear. Money as a catalytic agent changes red blood to blue very quickly.

The absence of rigid class lines is significant in the study of American labor. It is at least theoretically possible for a worker to rise to great wealth and position from a lowly estate, and in the past such vertical class mobility was common. The "rags to riches," "canal boy to president," tradition is still strong, however, and undoubtedly influences the attitude of many workers toward their own situation in relation to that of the working class as a whole. It is said that the American worker regards himself as a capitalist in the embryo, viewing his present situation as temporary and hoping soon to grow out of it and enter into the ranks of employers. This attitude is waning, but it has by no means disappeared.

The character of our class structure has a marked effect upon our aspirational standard of living. There is no law which forbids the poor to desire what the rich possess. We in the United States, rejecting the notion that there is a fixed standard of living beyond which workers ought not to

aspire, encourage people to aim ever higher on the assumption that each ought to get what he deserves. The obstacle in the way of attaining a better standard of living is, of course, the lack of funds; if this cannot be remedied by becoming an employer, the worker may resort, as millions have resorted, to union organization. The union thus becomes the means of attaining the desirable objective—the improvement in living conditions. In the United States the worker may still dare to aspire higher.

Money economy. We live and work in a society geared to money, and we think, talk, and act in terms of money. In medieval days, money was little used. In modern times, when people are much more dependent on each other for the satisfaction of their wants, some medium of exchange is absolutely necessary, for without it we could not exchange our goods and services for those of other people. But money, in the modern sense, is more than a medium of exchange—it is a habit of thought. It permits us to purchase the goods we desire; it also serves as a standard for judging men and their attainments. The mere possession of money, quite apart from any use made of it, is important. Money counts in more ways than one. Our society places a high value on the rich man and a correspondingly low value on the poor one. There are exceptions, but generally the rich are our important citizens and the "poor relations" count for but little.

Workers have the same scales of values as other people. In our society they too recognize the importance of money as a means of getting the things they want; they recognize as well its importance as a factor in securing prestige. Increases in wages are important because they expand purchasing power; they also help to raise the worker's esteem in his own eyes and in the eyes of his fellows. A man who earns fifty dollars a week often regards himself as superior to the man earning only twenty-five dollars. There are labor aristocrats and labor plebeians, the difference being largely a matter of the size of the weekly pay envelope.

In studying the behavior of workers it is difficult to separate the importance of money from other psychological factors; yet, it would appear, that a money economy in the sense used here creates a standard of achievement or performance which rates occupations in terms of financial returns rather than in terms of service rendered.

The role of advertising here must also be mentioned. In newspapers and magazines, streetcars, buses, and trains, and through the radio, we are constantly informed of this or that commodity whose possession is essential to our welfare. New homes, new automobiles, electric refrigerators, radios, clothes, foods, cosmetics—all are paraded before us in an endless stream. Our resistance as consumers is broken down and we are led to want these things. If our neighbors get them, the pressure upon us to secure them becomes

irresistible. And there is no reason why we cannot get the things we want or why we should not have them—except that we may not have the money. But this difficulty can be remedied if only we can get a raise.

Workers' wants. We may well ask, "What do the workers want?" As the worker is the product of his environment, the answer to this question will depend on who the worker is and the group to which he belongs. In general, it may be said that most workers want security, a living wage and a feeling of social worth. These terms, however, have different meanings for different groups of workers. What is a handsome wage for some is hopelessly inadequate for others; what is insecurity to some would be security to others. For each individual group of workers we must raise questions concerning their background, their standards of living (present and aspirational), their beliefs regarding their own position and their relation to others, and their desires. There is no definite pattern which will fit all alike; rather, the problems of each must be considered separately. The clothing workers present one sort of picture, the miners another, the printers a third, and the workers in the building trades a fourth. Each group has its peculiarities marking it off from the others.

Yet these divergences between groups of workers must not be permitted to obscure the things they have in common. Some of these we have already indicated—they live in a money economy, dedicated to profit seeking, a society which places no formal obstacle in their struggles for self-improvement but which, at the same time, makes self-improvement difficult for the great mass.

While security and a satisfactory income are doubtless the outstanding objectives of workers, other factors also enter the picture. Chief among these is probably the desire for status. We are aware of the fact that different employments have different prestige values, not always to be explained by the difference in pay. Traditionally, white-collar workers have regarded themselves as superior to manual workers, even where the latter earn more money. Work in the office is regarded as preferable to work in the factory; working with brain has a prestige value not associated with working with brawn. Such an attitude is difficult to explain logically, but it plays an important part in the lives of workers—manual workers are often heard to say that they want their children to do something better. Basic in our behavior is the wish to appear important—to stand out, to be "recognized"; this comes as close to being a universal drive as any. For the American worker this is often broken down into a series of desires: to be treated by the employer "like a human being"; to be known by name and not by a number; to assert his independence; to have good performance recognized and rewarded, though not necessarily in a financial way; and perhaps to have something to say

about methods of performance and the conditions under which the work is to be done. As we shall point out in Book IV, one of the keystones of personnel management is the recognition of individual worth and achievements. Most employers have recognized that workers dislike being treated "like dogs"; that they dislike being ignored and regarded as of no account.

Closely related to this is the desire of most workers to have a sense of doing something useful. Critics of labor to the contrary, the overwhelming majority of workers like to "earn" their money; they take pride in their skill and strength; they like to feel that they are an important part of some valuable function. Getting paid for "doing nothing" may be fun for a while; but it soon palls and the worker is likely to become restless and discontented unless he can be made to feel that his contribution to the product is important.

Finally, the worker wants to earn his living under substantially the same conditions as others in the same general group. He resents being required to work longer than the prevailing number of hours, to do more in a given period of time than is customary, to do work he feels is inferior to the work he was hired to do or inferior to the work he feels himself capable of; he also resents being denied certain conveniences like showers, drinking fountains, and locker rooms which other workers have.

The Industrial Revolution. The pursuit of profits and the making and spending of money incomes take place in a society which has been completely transformed within the past century and a half by the Industrial Revolution. The foundations of this revolution were laid in the vast changes which occurred in Europe from the late Middle Ages to about the middle of the eighteenth century. During this period the economy of Europe was profoundly affected by the rapid growth of trade, the quickening of the spirit of pecuniary gain, the conquest and exploitation of huge overseas territories, and the influx of precious metals. National states emerged, and powerful governments took a hand in furthering national economic interests. At the same time, the breakup of the manors contributed to the development of a large class of propertyless workers who became the raw material for modern industry.

In 1725 Defoe described the conditions in Yorkshire then existing:

The land was divided into small enclosures from two acres to six or seven acres each, seldom more, every three or four pieces having a house belonging to them; hardly a house standing out of speaking distance from another. We could see at every house a tenter and on almost every tenter a piece of cloth, or kersie, or shalloon. At every considerable house there was a manufactory. Every clothier keeps one horse at least to carry his manufactures to market, and everyone generally keeps a cow or two or more for his family. By this means the small pieces of enclosed land about each house are occupied, for they scarce sow corn enough to feed their poultry. The houses are full of lusty fellows, some at their dye-vats,

some at their looms, others dressing the cloth; the women or children carding or spinning; all being employed from the youngest to the oldest.

At that time the worker owned his own tools and he sold his own finished product. But a remarkable series of inventions in the latter part of the eighteenth century was destined to revolutionize this simple life. Kay's flying shuttle enabled one weaver to do the work of several, and it was not long before Hargreaves and Arkwright had invented the spinning jenny. The power loom was invented by Cartwright in 1785, and only eight years later Whitney invented the cotton gin. These inventions of necessity meant that the ordinary worker could no longer own his own tools. No longer able to own such complicated and costly machinery, he had to become a hired hand.

In 1769 Watt invented the steam engine which a few years later was already being applied to cotton manufacture as well as to the iron industry. Thus at the close of the eighteenth century we find steam power being effectively used in the manufacturing process.

During the early part of the nineteenth century mankind utilized this same steam power for locomotion on both land and sea. It was not long before machines were making other machines. This enabled the machine process to be extended almost from the raw materials to the finished product. The flood of inventions has been increasing in geometric ratio ever since. Each new invention may become the basis for many others. Without the gasoline engine, for instance, the modern automobile was impossible. As inventors and machines have multiplied, there has been a gradual concentration of raw materials and money in the hands of giant corporations.

The transformation that resulted from these inventions in England was rapid and startling. In the middle of the eighteenth century England was half rural. By 1860 the rural population had fallen to 37.7 per cent, and by 1890 it was down to 28.3 per cent. The Industrial Revolution and the exchange of finished products for raw supplies meant that a much larger population could be supported, and in thirty years, from 1800 to 1830, the population of England increased 56 per cent. The result was that women and children were transported to the mill districts where, as one writer describes the situation, "Little slaves worked night and day in relays, so that the beds in which they slept never cooled, one batch following another in turn for its share of rest in the filthy rag piles." Inventions caused maladjustment and in the nineteenth century England began a remarkable series of legislative enactments, starting with the Factory Act of 1802 and culminating in unemployment and other forms of social insurance in the twentieth century.

By the middle of the nineteenth century, then, there were present, at least in England, a working class, a capitalist class possessed of liquid capital

ready and eager for investment, and natural resources. These and technological changes made possible the development of a new industrial system. First appearing in England, the Industrial Revolution spread to other parts of Europe and to other continents, ultimately reaching all parts of the world.

In the United States, the Industrial Revolution came later than in England, but its rapid development after the Civil War made of our country, within relatively few decades, the foremost industrial nation of the world. The figures for the value of manufactured products, for example (see Table 1), show an increase from a little over a billion dollars in 1849 to almost

TABLE 1
GROWTH OF MANUFACTURES, 1849-1935

Year	Average Number of Wage Earners	Value of Products (In Thousands)
1849	957,059	\$ 1,019,107
1859	1,311,246	1,885,862
1869	2,053,996	3,385,860
1879	2,732,595	5,309,579
1889	4,251,535	9,372,379
1899	5,306,143	13,000,149
1899	4,712,763	11,406,927
1909	6,615,046	20,672,052
1919	8,989,535	61,737,125
1929	8,821,757	69,960,910
1935	7,378,845	45,759,763

Source: U. S. Dept. of Commerce, *Biennial Census of Manufactures, 1935*. Government Printing Office. Washington, D. C., 1938. Pp. 18-19. Hereafter referred to as *Census of Manufactures*.

seventy billions in 1929; at the same time the average number of workers employed in manufacturing increased from less than a million in 1849 to nearly nine million in 1929.²

In the course of this striking development, vast new industries have been established, and some old ones enormously expanded. A picture of the relative current importance of various industries is given in Table 2, which contains data on the value of products of sixteen industrial groups for 1929 and 1935.

Still a sharper picture of the rate of change is presented through the use of index numbers. In the thirty years from 1899 to 1929 there were increases of 88 per cent in the number of wage earners in manufacturing industries, 211

² Estimates up to 1899 included hand and neighborhood industries; thereafter the estimates were limited to factory industries. Figures for 1899 were compiled on each basis and are so given here.

TABLE 2
VALUE OF PRODUCTS FOR SIXTEEN INDUSTRIAL GROUPS
(In thousands of dollars)

Industry	1929	1935
Food and kindred products.	\$11,606,368	\$9,510,675
Textiles and their products.	9,248,393	6,060,834
Forest products	3,531,282	1,662,221
Paper and allied products.	1,892,251	1,523,286
Printing, publishing and allied industries.	3,155,828	2,164,995
Chemicals and allied products.	3,702,672	2,837,315
Products of petroleum and coal.	3,647,748	2,464,274
Rubber products	1,117,460	677,659
Leather and its manufactures.	1,906,201	1,224,431
Stone, clay, and glass products.	1,561,415	946,480
Iron and steel and their products, excluding machinery. . . .	7,342,234	4,265,327
Nonferrous metals and their products.	3,392,752	1,668,561
Machinery, not including transportation equipment.	7,118,176	3,816,332
Transportation equipment, air, land, and water.	6,047,209	4,305,629
Railroad repair shops.	1,269,917	420,097
Miscellaneous industries.	3,421,004	2,211,747

Source: *Statistical Abstract of the United States, 1938*, Government Printing Office. Washington, D. C., 1939. Pp. 752-53. Hereafter referred to as *Statistical Abstract*.

per cent in the quantity of production, and 65 per cent in the production per worker.

Population kept pace with industry. A high rate of natural increase

TABLE 3
INDEXES FOR WAGE EARNERS AND PRODUCTION, 1899-1935

Census Year	Wage Earners	Production (Quantity)	Production Per Wage Earner
1899	100	100	100
1904	114	122	107
1909	137	159	116
1914	146	170	116
1919	191	214	112
1921	147	169	115
1923	186	263	141
1925	178	274	154
1927	177	274	155
1929	188	311	165
1931	139	206	148
1933	129	191	148
1935	157	227	145

Source: *Census of Manufactures, 1935*. P. 17.

combined with millions of immigrants to multiply the nation's population more than thirty times from 1789 to 1938.

TABLE 4
GROWTH OF POPULATION CONTINENTAL UNITED STATES

CENSUS YEAR	POPULATION
1790	3,929,214
1800	5,308,483
1810	7,239,881
1820	9,638,453
1830	12,866,020
1840	17,069,453
1850	23,191,876
1860	31,443,321
1870	38,558,371
1880	50,155,783
1890	62,947,714
1900	75,994,575
1910	91,972,266
1920	105,710,620
1930	122,775,046
1938	130,215,000

Source: *Statistical Abstract*, 1938. Tables 2, 12. Pp. 2, 10.

According to the latest available census figures (those for 1930) of our population of 122,000,000, nearly 49,000,000 were gainfully employed, and were thus distributed among the various occupations:

TABLE 5
GAINFUL WORKERS TEN YEARS OLD AND OVER, 1930

General Division of Occupations	Number	Per Cent Distribution
Agriculture.....	10,471,998	21.4
Forestry and fishing.....	250,469	.5
Extraction of minerals.....	984,323	2.0
Manufacturing and mechanical industries.....	14,110,652	28.9
Transportation and communication.....	3,834,147	7.9
Trade.....	6,081,467	12.5
Public Service (not elsewhere classified).....	856,205	1.8
Professional service.....	3,253,884	6.7
Domestic and personal service.....	4,952,451	10.1
Clerical occupations.....	4,025,324	8.2
TOTAL.....	48,829,920	100.0

Source: *Statistical Abstract*, 1938. P. 57.

Industrialism and the worker. The revolutionary transformation brought about by the Industrial Revolution affected the worker in many

ways. Before the industrialization of our economy, he commonly owned the tools with which he worked. Under the old handicraft system, few households were without the spinning wheel and the loom, which were used more often for the production of clothes for members of the household than they were for the production of clothes for sale. The late eighteenth-century cottage worker resembled in many respects the small contractors to be found today in the clothing industry; he received the goods from the merchant-capitalist and returned the finished product, using his own tools in production and receiving compensation for his services. There were, of course, some factories in which wage workers were assembled under one roof, but these were exceptional. Besides, there were many itinerant craftsmen, such as tinkers and potters and shoemakers, who traveled from village to village doing such work as they could get and receiving part of their compensation in board and lodging. With the Industrial Revolution, the new machines, costly and quite beyond the means of the great majority of workers, were owned by wealthy entrepreneurs; thus the worker ceased to be a semi-independent contractor and became a factory hand.

It had been customary, prior to the Industrial Revolution, for many people to make only part of their living from industry. They owned some farm land which they and their families cultivated. Often the man would work in the fields while the spinning and weaving were carried on by his wife and children. Under such an arrangement the family was only partially dependent on industry for its livelihood. When there was no work the family might suffer, but there was not that complete cessation of the means of living which characterizes modern industry. The factory system made it virtually impossible for the worker to be part-worker part-farmer.

Factories, built where water power could be secured easily, led to the rapid growth of large urban centers, such as the textile towns of New England. The workers had to leave their farms and go to the city, where the job became the only source of income. Of course, when water power ceased to be the only, or even the most important, source of energy, it became possible to establish factories in other areas, but urbanization brought about by industrialization still continued. In 1790 there were only 6 urban centers in the United States with a population of 8,000 or more, containing only 3.3 per cent of the total population. By 1930, 1,208 cities and towns contained 49.1 per cent of the total population.³ In other words, nearly half of the American people lived in cities and towns of 8,000 or more population. Even more striking is the concentration of wage earners in a relatively small portion of the country. According to Goodrich: "In the 200 counties that comprise the industrial areas and the important industrial counties, there were located 74 per cent of all the manufacturing wage jobs in the United States in 1929.

³ *Statistical Abstract*, 1938. P. 6.

Or, stated the other way, in some 2,800 counties comprising the 'All the rest' area were found only 26 per cent of all the wage jobs."⁴

The rapid growth of industrial centers, together with the low wages received, made miserable housing conditions almost inevitable. Housing in rural America is scarcely the sort of which we can be proud, but it appears to be much better in terms of health than the housing in our larger cities. When President Roosevelt, in 1937, dramatically called attention to the "third of a nation" which was badly housed, clothed, and fed, he merely emphasized what had long been known to social scientists. The slums and blighted areas in our large cities may not be the worst in the world, but there is no gainsaying the menace they contain for the health, safety, and morals of a large portion of the population.

Introduction of the machines has largely deprived the worker of his craft and made him into a machine tender. Descriptions of industry in the premachine era almost invariably mention the long periods of apprenticeship required for most occupations. Even at the present time there are some occupations, especially in the building and printing trades, in which the worker must undergo several years of training before he is permitted to work as a journeyman. But for the majority of workers the machine has made training and apprenticeship much less necessary than previously. In a host of occupations skill, thought, and intelligence have been largely transferred from the man to the machine. Workers are specialists now in the sense that they concentrate on doing one very small part of a big job; their work, repetitive and monotonous, is learned very quickly. There have been created, to be sure, many jobs in modern industry such as machine designing which call for years of training and experience, but these at most comprise only a small percentage of the total number of jobs. For industry as a whole, the machine has replaced skilled workers with semiskilled and unskilled; of the forty-nine million gainfully employed workers in 1930, a strikingly large proportion were unskilled and semiskilled workers, as Table 6 shows.⁵

In 1930, then one in every four of the gainfully employed was an unskilled worker, one in six semiskilled, and one in eight skilled, while clerks and kindred workers, comprising the so-called "white-collar workers," made up roughly one in six.

Possession of skill is important to the worker in that it may give him pride in performing a difficult and complicated task and in that the work to be done is varied rather than monotonous. Much more important, however, is the significance of skill in terms of compensation. A skilled worker is paid more than an unskilled worker, not so much because his work is more

⁴ Carter Goodrich and Others, *Migration and Economic Opportunity*. University of Pennsylvania Press. Philadelphia. 1936. P. 321.

⁵ Edwards, *op. cit.*, pp. 3-12.

important, but because he has fewer competitors for the work. He cannot be so easily replaced if he quits his job or goes on strike. Skill is thus an important factor in the worker's bargaining power. Deprive the worker of his stock in trade, and he becomes one of a very large number of men all of whom can do work which formerly required training and experience. All workers are now his competitors and his bargaining power is accordingly reduced.

TABLE 6
NUMBER OF GAINFUL WORKERS IN VARIOUS ECONOMIC GROUPS, 1930

Economic Groups	Male	Female
1. Professional persons.....	1,497,934	1,447,863
2. Proprietors, managers, and officials:		
a. Farmers (owners and tenants).....	5,749,367	262,645
b. Wholesale and retail dealers.....	1,675,193	111,854
c. Other proprietors, managers, and officials.....	1,735,336	131,145
3. Clerks and kindred workers.....	4,877,235	3,072,220
4. Skilled workers and foremen.....	6,201,542	81,145
5. Semiskilled workers.....	5,448,158	2,529,414
6. Unskilled workers:		
a. Farm laborers.....	3,746,433	646,331
b. Factory and building construction laborers.....	3,248,622	125,521
c. Other laborers.....	2,871,744	31,321
d. Servant classes.....	1,026,240	2,312,657

Source: Alba M. Edwards, *A Social-Economic Grouping of the Gainful Workers of the United States*. Government Printing Office. Washington, D. C., 1938. Pp. 3-12.

The growth of the factory system and the development of our economic organization to its present extent also mean that the worker, dependent as he is for his living on what he earns with his hands and brain, is the football of the business cycle. All are familiar with the ravages of unemployment, but less attention is given to the fact that in periods of depression the worker's wage is cut sharply even if he is fortunate enough to retain his job. With business recovery, his wage may increase, only to fall again with the first impact of depression. Hence, leaving the consequences of unemployment aside, the worker's income moves up and down, corresponding to the movements of business. This might not be serious if at the worst his wage insured him a "minimum health and decency" standard of living. But many workers do not attain this standard even in the best of times.

Mention must be made also of the fact that modern industry has brought with it, as we shall see later, industrial accidents, occupational disease, and other types of insecurity. These risks, peculiar to the worker, are in addition to those which he shares as a member of an industrial society.

DISTRIBUTION OF POWER AND INCOME

The giant corporation. Among the most significant results of the Industrial Revolution was the emergence of the giant corporation as a controlling factor in economic life. Important economies to be made through large-scale production, profits to be secured through the erection of monopolies dominating strategic sectors of trade and industry, promoters' and underwriters' profits to be obtained through the formation of huge industrial combinations and the flotations of security issues aggregating billions of dollars, and the desire to have a big business merely for the sake of size—all these contributed to produce a situation in which a relatively small number of enterprises have a commanding position in many of our most important industries.

According to the best available sources, there were a little more than two million concerns in business in the United States in 1937, the number having increased from 1,219,242 in 1901 to 2,056,598 in 1937.⁶ Of this total, only about a fourth were corporations. Figures for 1936 show income tax returns to the Bureau of Internal Revenue from 530,779 corporations, of which 51,922 were inactive.⁷ In other words, the number of corporations is considerably smaller than the number of individual proprietorships and partnerships, though it is probably larger than the number of partnerships and is much smaller than the number of individual proprietorships. Growth in the number of corporations has been rapid, having almost doubled between 1910 and 1936. In manufacturing, corporations accounted for 23.6 per cent of the number of establishments in 1904, 25.9 per cent in 1909, 28.3 per cent in 1914, 31.5 per cent in 1919, and 48.3 per cent in 1929, not counting in that year those establishments producing goods valued at less than \$5,000 per annum.⁸

In 1904 corporations employed 70.6 per cent of the average number of wage earners in manufacturing; by 1919 the percentage was 86.6, and by 1929 it had increased to 89.9 per cent. Corporations produced in 1904 73.7 per cent of the total value of manufactured products; in 1919, 87.7 per cent, and in 1929, 92.1 per cent. In other words, in 1929, 48.3 per cent of the number of establishments employed 89.9 per cent of the wage earners and produced 92.1 per cent of the value of products.⁹

Of course the mere fact of incorporation does not mean that the business concern involved is large. On the other hand, with the exception of fields such as private banking, in which partnerships predominate, it is common for individual proprietorships and partnerships to be rather small enter-

⁶ *Statistical Abstract*, 1938. P. 298.

⁷ *Ibid.* P. 190.

⁸ Twentieth Century Fund, *Big Business: Its Growth and Its Place*. Twentieth Century Fund, Inc. New York. 1937. P. 15.

⁹ *Ibid.*

prises. In considering questions of size and power, therefore, we may restrict ourselves to corporations.

The corporation income tax returns for 1935 show that the 742 corporations which have over \$50,000,000 each in assets—*fewer than .018 per cent of the whole number of corporations*—accounted for more than half of the total assets and for more than half of the total net profit of all corporations.

In manufacturing, 126 corporations had total assets of nearly \$20,000,000,000, while 85,691 corporations had total assets of less than \$33,000,000,000.

In mining and quarrying, 23 corporations had assets exceeding \$2,750,000,000; 11,468 other corporations had assets of less than \$6,750,000,000.

In transportation, 221 corporations accounted for nearly \$50,000,000,000 in assets. The other 20,928 corporations had only about a third as much in assets.

In trade, 21 corporations, with about \$2,333,000,000, stood out against 130,296 corporations with \$15,200,000,000.

In finance, banking, and insurance, 344 corporations had nearly \$81,000,000,000 in assets, compared to the less than \$64,000,000,000 of 103,802 corporations.¹⁰

The picture which emerges from these statistics does not hold for all industries. In men's and women's clothing, in silk and rayon goods, in furniture, and in paper, very large corporations are either not found or else do not dominate the scene. In other industries, such as typewriters, cigarettes, motor vehicles, aluminum products, the smelting and refining of nonferrous metals, agricultural implements, and iron and steel, the position of the largest firms in the industry is very strong.¹¹

What consequences are implied by this concentration of power in the hands of giant corporations? For the community as a whole, there is the threat of monopoly power with all its inherent dangers. For workers as a group, the vast growth of the individual enterprise obviously makes the bargaining power of the individual worker wholly insignificant and renders it more difficult for workers to organize into collective bargaining units in order to improve their conditions. Power is relative, and as the employer becomes stronger, the worker automatically becomes weaker. In addition, as the large corporations employ more and more workers, the individual has fewer job opportunities. He no longer can avail himself of the competition among employers for his services which characterizes an economy of numerous small enterprises.

¹⁰ Compiled from data in *Statistical Abstract*, 1938. P. 201. Much valuable information on the role of the giant corporation in American economic life can be found in National Resources Committee, *The Structure of the American Economy*. Part I, "Basic Characteristics." Government Printing Office. Washington, D. C. 1939. Especially Appendices 7-13, inclusive. See also *Investigation of Concentration of Economic Power*. Hearings before the Temporary National Economic Committee. Government Printing Office. Washington, D. C. 1939. Part 1.

¹¹ Twentieth Century Fund, *op. cit.*

To bring home the full import of concentration it is necessary to point out that most of our large corporations are controlled by "insiders" who through one device or another achieve power within the corporation. Ownership of the modern giant corporation has been separated from control, and the overwhelming majority of stockholders have no voice in the affairs of the corporation. The policies of the corporation toward labor, as toward other problems, are essentially, then, the policies of the "insiders" rather than those of the body of stockholders. The former, since they often own practically no shares in the company, may be motivated by their own advantage rather than by the interests of the stockholders. The profits of a company, for example, may be threatened by a strike, and it may appear wise to agree to union demands in order to continue production. But, if the "insiders" have a strong antiunion bias, profits may be sacrificed in preference to having the union "tell" the controllers of the corporation "how to run *their* business."

Individual wealth and income. With the growth of corporate wealth and power, there has been a substantial concentration of individual wealth in the hands of a small percentage of the population. The incomes of the vast majority of people permit no margin of saving, while the incomes of a few are so great that they are difficult to spend. For the latter, saving and investment serve to increase their fortunes, regardless of lavish personal expenditures.

The Federal Trade Commission in 1926¹² found that roughly 1 per cent of the people owned 59 per cent of the wealth, while 13 per cent owned 90 per cent. On the other hand, some 87 per cent of the people owned only 10 per cent of the wealth. Among these are 75 per cent who owned almost nothing.

Perhaps the most revealing data regarding the distribution of wealth is given by the income tax returns. In 1929 only 2,458,049 individuals paid an income tax—in other words, about 2 per cent of the population and only 4 out of every 100 adults. And this was in the year of our greatest prosperity. The proportion of the tax which was paid by individuals who had a salary under \$5,000 was less than .5 per cent of the total income tax paid by individuals in that year.

The Brookings Institution, after an exhaustive examination, reported that in the peak year of 1929 nearly 6,000,000 families (roughly a fifth of the total number) received an annual income of less than \$1,000. About 36,000 families at the top received as much as 11,500,000 families at the bottom of the social scale. President Roosevelt in 1938 declared that 47 per cent of all the families and individuals in the United States have an income of less than \$1,000 a year, while only 1.5 per cent of the wealthiest have an aggregate

¹² Federal Trade Commission, *National Wealth and Income*. Government Printing Office, Washington, D. C. 1926.

income so vast that it equals that of all the 47 per cent combined. Roughly, 1 out of every 300 in the population, he said, receives 78 cents from corporate dividends, while all the other 299 combined receive only 22 cents.

The Brookings study reported that if the income of all families were raised to at least the \$2,500 level, the United States would consume each year as much as was produced in the country at the peak of production in 1929.¹³

The bulk of consumer expenditures is made by the mass of the people in the lower brackets. All the individuals who had incomes of \$5,000 or more in 1929 spent only \$1,319,700,000 for food, whereas the total spent by all the people below \$5,000 was \$21,852,300,000, or 16 times as much. In fact, counting all consumer expenditures in 1929, those with incomes of \$5,000 and over spent roughly only some \$16,000,000,000, whereas the rest of the people spent some \$74,000,000,000.¹⁴ It is small wonder, that, when labor income dropped from \$52,000,000,000 in 1929 to \$31,000,000,000 in 1932, business should suffer from loss of purchasing power. While wages were thus being drastically reduced, interest payments remained almost stationary, being \$5,667,000,000 in 1929 and \$5,491,000,000 in 1932.¹⁵

The Study of Consumer Purchases, a project conducted by the W.P.A., has supplied much information concerning the distribution of consumer incomes, some of which appears in Table 7. It will be noted that of the 39,458,300 families and single individuals, 59.19 per cent received less than \$1,250 in income in 1935-36 and 68.68 per cent received less than \$1,500.

The state and economic activity. Between the middle of the eighteenth century and the opening of the twentieth, the modern state underwent fundamental changes, some of which can be externally seen in the size of the public debt and the percentage of national income which goes to the government in taxes, as well as in the enormous expansion in the personnel of government and the number of points at which it touches the individual. The factory system and machine technology, with the consequent growth of trade and the development of large cities, created numerous problems which could not be solved satisfactorily through the efforts of individuals. As people began to make use of the ballot, the government appeared to be the logical agency to cope with these problems.

Book V is devoted to a detailed analysis of the relations of government to labor problems. Here it is sufficient to point out that the state, which has become one of the most potent factors in industry, now regulates many phases of labor which formerly went unregulated. This development, repre-

¹³ Maurice Leven, H. G. Moulton, and Clark Warburton, *America's Capacity to Consume*. Brookings Institution. Washington, D. C. 1934. Pp. 239 ff.

¹⁴ R. R. Doane, *The Measurement of American Wealth*. Harper & Brothers. New York. 1933. P. 169.

¹⁵ *National Income, 1929-1932*. P. 14.

sented by unemployment insurance, workmen's compensation, old-age pensions, minimum-wage legislation, in the United States is a product of the twentieth century.

TABLE 7
CONSUMER INCOMES, 1935-36

INCOME LEVEL	FAMILIES AND SINGLE INDIVIDUALS		
	Number or Amount	Per Cent at Each Level	Cumulative—Per Cent
All levels	39,458,300	100.0	100.0
Under \$250	2,123,534	5.38	5.38
\$250-\$500	4,587,377	11.63	17.01
\$500-\$750	5,771,960	14.63	31.64
\$750-\$1,000	5,876,078	14.90	46.54
\$1,000-\$1,250	4,990,995	12.65	59.19
\$1,250-\$1,500	3,743,428	9.49	68.68
\$1,500-\$1,750	2,889,904	7.32	76.00
\$1,750-\$2,000	2,296,022	5.82	81.82
\$2,000-\$2,250	1,704,535	4.32	86.14
\$2,250-\$2,500	1,254,076	3.18	89.32
\$2,500-\$3,000	1,475,474	3.74	93.06
\$3,000-\$3,500	851,919	2.16	95.22
\$3,500-\$4,000	502,159	1.27	96.49
\$4,000-\$4,500	286,053	.72	97.21
\$4,500-\$5,000	178,138	.45	97.66
\$5,000-\$7,500	380,266	.96	98.62
\$7,500-\$10,000	215,642	.55	99.17
\$10,000-\$15,000	152,682	.39	99.56
\$15,000-\$20,000	67,923	.17	99.73
\$20,000-\$25,000	39,825	.10	99.83
\$25,000-\$30,000	25,583	.06	99.89
\$30,000-\$40,000	17,959	.05	99.94
\$40,000-\$50,000	8,340	.02	99.96
\$50,000-\$100,000	13,041	.03	99.99
\$100,000-\$250,000	4,144	.01	100.00
\$250,000-\$500,000	916	*	—
\$500,000-\$1,000,000	240	*	—
\$1,000,000 and over	87	*	—

* Less than .005 per cent.

Source: *Statistical Abstract*, 1938. P. 304.

The American worker—a composite picture. What are some of the characteristics of the average American worker? To sketch him is difficult, for a complete picture would call for a consideration of his education, his religious beliefs, his political affiliations, the community in which he grew up, the peculiar characteristics of the industry in which he is engaged and a host of other factors which help to shape the worker's attitudes toward himself and society. Furthermore, a picture of the mythical "average American worker" would tell us nothing of those who do not conform to pattern. With these qualifications in mind, it may be helpful to list some of his

characteristics. He is male, white, native-born, and between twenty and forty-four years of age. He can read and write. He lives in city or town, but has only recently migrated from rural areas. He has no independent income, but receives his livelihood from his work. He is an unskilled or semiskilled worker. He has to support at least one other person beside himself. His income is less than \$1,500 a year and is subject to sudden and extreme fluctuations, because of accidents, disease, unemployment, and old age. He regards himself as equal to the next person, aspires to a considerably higher standard of living, and feels that there is a good chance for him to attain it.

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QUESTIONS

1. What is the main motive which activates our society? Cite concrete examples of this from individuals or communities you know.
2. What do the workers want?
3. Describe the changes which the coming of the Industrial Revolution has brought.
4. Describe roughly the make-up of the gainfully employed workers according to the 1930 census.
5. State the approximate concentration of assets and profits in the corporate structure of the United States. Why does this condition exist?
6. Describe the concentration of wealth as shown by the income-tax returns. How does this concentration affect the labor problem?

AT THE center of modern man's existence is the question: Has he work for his hands so that he may have bread for his family? Anything which interferes with his opportunities to work so that he may eat strikes at the very basis of his life. For all but a handful of people in our industrial society, the only means of securing a livelihood is the wage or salary received in exchange for services, or the income received from their businesses. To all people who have no independent income—an income which will permit them to live in their accustomed style without the necessity of rendering personal service—loss of the job is a dreadful calamity. Now many causes may operate to bring about the loss of the job or, what is more important to the individual, the loss of income. Among these things are accidents, sickness, old age, and unemployment. Of these, unemployment is without doubt the most serious in extent, in costs, and in consequences, and, within the framework of our present economy, the most difficult to solve.

WHAT IS UNEMPLOYMENT?

Unemployment is not synonymous with idleness. The unemployed man may be said to be idle in the sense that he does not have a remunerative job, but the idle man is not necessarily unemployed. What the unemployed man needs and wants, above all, is a job; a job may be the last thing in the world which an idle man might either need or want. Whether we think in terms

of remedies or causes, it is clear that unemployment is essentially a matter of maladjustment between the number of jobs and the number of workers. In the case of idleness of other sorts, caused by sickness, for example, there may be either no maladjustment or a maladjustment of an altogether different sort with different causes and remedies. This is not to say that the unemployed worker is necessarily better or worse off than the man who is idle for other reasons, but rather that the problems are fundamentally distinct and must be studied separately.

We may define an unemployed person as one who is *able to work and willing to work but cannot find a job*.

Ability to work. What does "able to work" mean? Does it suggest mental ability, physical ability, legal ability? And who is the judge of ability? The worker himself? The employer? The government? There are certain groups of people who, although perhaps physically and mentally able to perform many types of work, are still not "able to work" because of some legal obstacle. Under the Fair Labor Standards Act of 1938, for example, children under the age of sixteen are barred from most occupations, and in hazardous industries children under eighteen may not be employed. Other laws may bar women from employment in certain occupations, such as mining, or prohibit them from working at night, say between 10 P.M. and 6 A.M. Convicts and inmates of other penal institutions are legally barred from remunerative employment outside the prison. In other instances, the state may prevent a person from pursuing his calling as doctor, dentist, or lawyer because of previous unprofessional conduct, or because he has been convicted of a felony. Diseased persons may not be allowed by law to work as food handlers, and poor eyesight may be sufficient to keep a man from working as a locomotive engineer, policeman, or fireman. In these, as in numerous similar instances, the state has intervened to establish a legal disability for certain people. Sometimes the disability is generalized, as in the total prohibition of child labor under certain ages; sometimes it is particularized as in the exclusion of certain people from certain types of work or from work at certain hours. For such actions the state is undoubtedly well justified on numerous grounds of public policy, though in other cases—as in prohibitions of the employment of married women—the justification is less clear. In any event, when the state acts in a manner similar to that described, it is excluding various groups from the total of those able to work and the excluded persons cannot then be regarded as unemployed.

Physical disability obviously prevents the employment of people who are sick or injured, the lame, the halt, and the blind. Here, however, we begin to tread on doubtful ground. Must a man be so disabled as not to be capable of *any* work before we cease to regard him as "able" to work?

Surely there is some employment somewhere which can be undertaken by the blind man, or the armless man, or the legless man! It would probably be in keeping with prevailing practice not to consider as "able" those who are sick or are convalescent, and those suffering from some serious ailment or physical handicap which will effectively shut them out from all but a handful of employment opportunities. In this connection it is interesting to note the definition which life insurance companies have given to permanent and total disability. Among the specific items enumerated are loss of both eyes, loss of both hands at or above the wrist, both feet at or above the ankle. While the insurance standards are probably too rigid for our purposes, they do suggest the difficulties involved in trying to determine questions of physical disability.

And what of the man of fifty or fifty-five who cannot find a job? Is he too old to work? Or is he still able to work, and to be regarded as unemployed? As he makes the rounds looking for a job, he is told that he is above the company's maximum age limit for new employees. He might, as a matter of fact, have been fired from his last job because the employer thought him too old, or he might have been dismissed along with lots of others during a period of slack business, and then not rehired. He feels vigorous and competent, able to hold up his end of the work and more in competition with younger men. But he simply cannot get a job. What shall our attitude toward him be? Shall we say that our problem is to move down the age at which old-age pensions begin? Shall we attack the problem of finding jobs for people such as he?

At bottom, the questions raised here depend for their answer on the state of the industrial arts—technology—and the attitudes of employers. The number and the kind of workers finding jobs in modern industry are largely determined by the work there is available and the type of skill and experience it requires. Just as some machines deprive workers of their skill, place emphasis on speed and dexterity in the performance of routine operations, and age workers prematurely in an economic sense, so other machines enable those to find jobs who in a simpler craft technology could find no work to do. It is the organization of large-scale industry, the type of workers it demands, and the pace it sets which in a very real sense define ability to work. Aside from this, much depends, of course, upon the employer's attitudes. He does the hiring, and it is he whose judgment on physical ability is crucial. While his opinion will be largely guided by technological considerations, there remains a huge area of discretion where technology affords no satisfactory answer. Is age a serious factor in determining ability in, for example, bookkeeping or clerical work? Is a legless worker unable to work in an automobile plant at a job which requires merely the use of hands?

While a few employers have given serious thought to the problem, the majority seem to decide purely on the basis of "hunches."

Mental defects would clearly bar from employment the numerous inmates of institutions for the mentally sick. But here again, as in the case of physical ability, there are many doubtful cases. Are people of very low intelligence—morons, perhaps—mentally unable to work?

Willingness to work. Even more serious questions are raised when we consider the matter of willingness to work. Is a man willing to work if he does not go out each weekday looking for a job? Is a carpenter unwilling to work if he refuses a job as a ditchdigger? Or an actor or a violinist refusing work as a longshoreman? Suppose a man turns down a job at his customary occupation because the wage is below that of other men doing the same work. Suppose a nonunion employee quits his job because union members have gone out on strike. Suppose a man is a union member and is out on the picket line. Is a man unwilling to work if he rejects a job as a strikebreaker? If a job is available a considerable distance from his home, perhaps several hundred or a thousand miles? How long a period must elapse without work at the accustomed trade or at the customary salary, before we may reasonably expect a man to turn to some other employment or accept a lower wage or we may be justified in declaring him unwilling to work? These are not merely academic questions; public unemployment insurance agencies have to grapple with them every day of the week. If unemployment benefits are to be paid only to those who are willing to work, issues such as these must be settled either by statute or by administrative regulation.

THE EXTENT OF UNEMPLOYMENT

It is surprising that so few efforts have been made to ascertain even approximately the volume of unemployment. We are very careful to tabulate the number of bushels of wheat, corn, oats, and rye raised each year, the number of bales of cotton and the tons of coal annually produced. But toward unemployment we have been startlingly indifferent. It may be that the magnitude of the undertaking deterred government officials from trying an unemployment census. Perhaps it was the feeling that unemployment was a temporary phenomenon, or that finding the total of unemployed would not really make any difference anyhow, and might even, if the total were very large, increase fear and political unrest.

Whatever the reason, until 1937 the federal government took no steps toward discovering the extent of unemployment, with the exception of a few census figures. In that year, the Roosevelt Administration did take a postal census, mailing voluntary registration cards to some 31,000,000 families

on November 16 and 17. The postal carriers collected these cards during the next six weeks. Later a house-to-house canvass was made in certain localities to check against error. This was not a complete census but rather a voluntary tabulation of those who wished to hand in their names and be recorded. The report indicated that there were 10,983,000 unemployed.¹ At the same time, a New York newspaper, the *World-Telegram*, estimated that there were really 16,000,000 unemployed; this figure, however, included also part-time workers and young people seeking occupations.

Some data regarding the unemployed were gathered in the federal censuses of 1880, 1890, 1900, 1910, and 1930. However, although information on unemployment was included in the censuses of 1880 and 1910, we were so little concerned about the matter then that the data were not even published. For 1890 and 1900 we did publish information but it was meager and unreliable. In the 1920 census we did not even bother to secure *any* information on the subject.

In the 1930 census the unemployed were divided into the following categories, tabulation being made only for actual unemployment on the day previous to the enumerator's call:

- A. Persons out of a job, able to work, and looking for a job.
- B. Persons having jobs but on lay-off without pay, excluding those sick or voluntarily idle.
- C. Persons out of a job and unable to work.
- D. Persons having jobs but idle on account of sickness or disability.
- E. Persons out of a job and not looking for work.
- F. Persons having jobs, but voluntarily idle without pay.
- G. Persons having jobs and drawing pay, though not at work. (On vacation, etc.)

The results of this tabulation showed that in the first group were 2,429,062 and in the second group were 758,585.²

In addition to these official attempts to count the unemployed there have been surveys by private concerns, such as that of the Metropolitan Life Insurance Company in 1915 and again in December, 1930.

Since March, 1928, the American Federation of Labor has also been publishing the percentage of unemployment among trade-union members in twenty-four cities. Many other partial surveys of unemployment have been made of particular localities or particular groups.

¹ According to the tabulation of the cards, 7,845,016 people said they were totally unemployed. The test check, which involved the direct interviewing of about 2,000,000 persons, showed that the postal census had reached only 71% of the unemployed. From this, it was estimated that if the census had reached all the unemployed, the total would have come to nearly 11,000,000. See Corrington Gill, *Wasted Manpower*. W. W. Norton & Company. New York. 1939. Pp. 112-113.

² Much criticism has been directed against the 1930 census figures on unemployment, and it has been often charged that they grossly underestimated the volume of unemployment. Gill, *op. cit.*, p. 112.

Besides the surveys, estimates of unemployment have been made by many public and private agencies. Of these estimates the best known are those of the President's Committee on Economic Security, the American Federation of Labor, the National Industrial Conference Board, the Alexander Hamilton Institute, the Cleveland Trust Company, and the National Research League. Their estimates on the volume of unemployment for recent years are contained in Table 8. That there would be differences among these estimates was to be expected in view of the diverse methods of calculation used, but the differences are not great.

TABLE 8
ESTIMATES OF UNEMPLOYMENT IN THE UNITED STATES
ANNUAL AVERAGES
(In thousands)

Year	Committee on Economic Security	American Federation of Labor	National Industrial Conference Board	Alexander Hamilton Institute	Cleveland Trust Company	National Research League
1929	1,811	1,864	469	3,610	—	2,473
1930	4,912	4,770	3,849	7,063	4,124	5,325
1931	8,634	8,738	8,148	11,025	8,777	9,539
1932	12,802	13,181	12,516	14,825	13,416	14,220
1933	13,175	13,723	12,773	14,567	14,098	14,723
1934	11,582	12,364	10,523	12,809	12,130	13,288
1935	11,446	10,652	9,843	12,278	12,372	13,073
1936	9,924	9,394	8,159	10,882	12,528*	12,614
1937	8,980	8,282	7,028	9,497	—	—
1938	12,138	10,933	10,695	12,363	—	—

* Average for 4 months.

Source: Gill, *op. cit.*, p. 116.

In his testimony before the Temporary National Economic Committee, Commissioner of Labor Statistics Isador Lubin estimated that, taking 1929 employment as normal, in 9 depression years the United States lost over 43,000,000 man-years (see Table 9). This statement is based on employment figures. It seriously understates the unemployment of the period unless one allows for children growing up and adds the net increase in the population which is of employable age. In 1938, as Lubin stated, this population was about 6,000,000 greater than in 1929—a rise of 600,000 a year. Moreover, in 1929 there were about 2,000,000 unemployed. In each year thereafter one should bear this number in mind, perhaps as the “normally unemployed.” Hence if we wanted to estimate the number of the unemployed in 1938, we would note that 1938 jobs were almost 4,000,000 short of 1929 jobs, add 6,000,000 net increase in population and 2,000,000 normally unemployed:

total, 12,000,000—about the number estimated by the Committee on Economic Security (Table 8).

What, then, is the picture of unemployment in the country as a whole? We apparently have a situation in which about 12 per cent of the workers on the average are unemployed. In exceptionally prosperous periods the number may fall as low as one million, but it will rise to fifteen millions or more in a severe depression. This means that from 5 to 30 per cent of the workers are unemployed.³ Since the World War the percentage of unem-

TABLE 9
EMPLOYMENT LOST IN DEPRESSION IN NONAGRICULTURAL OCCUPATIONS
(In Man-years)

Year	Employment	Loss from 1929
1929	36,141,000	—
1930	33,925,000	2,216,000
1931	30,870,000	5,271,000
1932	27,661,000	8,480,000
1933	27,726,000	8,415,000
1934	30,259,000	5,882,000
1935	31,482,000	4,659,000
1936	33,201,000	2,940,000
1937	34,557,000	1,584,000
1938	32,153,000*	3,988,000*
Total loss, 1930-38		43,435,000

* Estimated.

Investigation of Concentration of Economic Power. Hearings before the Temporary National Economic Committee . . . 75th Congress, 3d Session . . . Public Resolution No. 113. Government Printing Office, Washington, D. C., 1939. Part I. P. 196, Exhibit 9. Source of basic data: Bureau of Labor Statistics. The annual employment figures are averages of monthly figures.

played has been considerably more, perhaps 50 per cent more, than it was for the twenty years previous.

It is hard for us to realize what figures mean, especially when they reach up into the millions. In 1938 there were estimated to be 11,000,000 unemployed. If they formed one long line, with each one close enough to touch the next, the line would extend from Washington, D. C., clear across the country over the Rockies to San Francisco, where the line could double back and reach across the continent again. Actually this number is almost four times as great as the army the United States sent to fight in France in 1918.

³ The yearly figures in Table 8 do not show the extremely high and the extremely low spots within the high and the low years. Thus in March, 1933, the National Industrial Conference Board showed an unemployment high of 14,700,000 or 29 per cent of the labor force; in September, 1937, a low of 5,600,000 or 10.6 per cent.

For every unemployed there are dependents. The unemployed have aged fathers and mothers, wives, and children. If we assume that each one has the equivalent of 2.5 dependents on the average, then this vast army of the jobless would represent a population approximately as large as the combined populations of Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Idaho, Indiana, Kansas, Maine, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

THE DURATION OF UNEMPLOYMENT

In the various surveys and estimates of unemployment, the emphasis has been on the volume of unemployment. More important than volume, however, is the duration of the unemployment, for obviously one year's unemployment for 2,000,000 men is more serious than one month's unemployment for 10,000,000. It would be desirable to secure some sort of combined index which would give us a clear picture of the gravity of unemployment by measuring simultaneously the extent and the duration of unemployment. Unfortunately, data on duration are quite scarce and, for the most part, unreliable. We do know that unemployment is of much shorter duration during good times than in depressions. Among W.P.A. workers studied in 1935, it was found that 25 per cent had been out of private work for less than a year, 25 per cent between one and two years, 25 per cent at least four years, 15 per cent from four to six years and 10 per cent had been out of private employment over six years.⁴ A Massachusetts survey in 1934 showed that 60 per cent of the unemployed had had no job for more than a year; a Cincinnati survey in the same year showed that 62 per cent of the unemployed had been out of work for at least a year.⁵

THE CAUSES OF UNEMPLOYMENT

Faced with the unpleasant realization that millions are in desperate straits as a result of unemployment, and being reluctant to place the blame at the door of society, many people resort, often quite unconsciously, to various rationalizations and myths concerning the causes of unemployment. There is the fiction that the unemployed, after all, don't want to work anyway. This notion has been bandied about so much that many people actually believe it. Now it is quite true that after a man has been unemployed

⁴ Gill, *op. cit.*, p. 128. In this statement "at least four years" probably means "three or four years."

⁵ *Ibid.*, p. 127.

for years he may get into the state of mind in which he gladly accepts relief and has no intention of looking for work seriously. But there is no doubt that the overwhelming majority of the unemployed want work and want it desperately.

There is another fiction—that the unemployed do not deserve work. It is sometimes glibly stated that the unemployed are largely bums and hobos who have dissipated and drunk and wasted their substance in riotous living. Here again there is an element of truth in the statement, since there are drunkards who are unemployed and some of the unemployed take to drink to drown their misery. But the number of such people is probably only an infinitesimal portion of the total jobless.

Much the same is true of the argument that most of the unemployed could not hold jobs even if they had them—they are shiftless and lazy and specialize in watching the clock. To people who have never experienced a protracted period of unemployment, who have worked hard and long and perhaps attained a modicum of economic success, it sometimes appears incredible that people who want to work and who are able to work should not be able to get jobs. The plain fact, however, is that millions who are sober, willing, and industrious simply cannot secure regular full-time employment. What are the reasons for this?

Dislocations of the labor market. Even if we could achieve the happy state in which the number of jobs would exactly equal the number of workers, we would probably find many workers looking for jobs and many jobs looking for workers. In the static state so dear to the hearts of classical economists, a situation such as this could not occur, for it is assumed that labor can move freely and effortlessly from occupation to occupation, from employer to employer, and from industry to industry. But in a dynamic society, this constant approximation of an ideal equilibrium does not exist. There may be, for example, an insistent demand for tool and die makers, but the available unemployed may be wholly unskilled. There may be no work for jobless vaudeville performers and actors but a real need for aviation mechanics. Geographical factors are also important; the unemployed may be concentrated in one area and the jobs in other areas, and there may be great difficulty in bringing the men and the jobs together. Whether the immobility of labor in any particular case is attributable to lack of requisite skills or to great geographic differences or even to simple ignorance of the existence of job possibilities, there is no doubt that it accounts for a portion at least of the total volume of unemployment.

It may appear strange to add that mobility of labor may also account for some unemployment. Writers have often remarked that American workers are commonly restless. It is true that workers will frequently quit their

jobs because they are dissatisfied with the prospects, because some other job or some other town seems to offer greater opportunities for advancement, because they dislike the work, because they are simply tired, or because of still other reasons. In the process of moving from one job to another, at least a short period of joblessness is inevitable.

Often, too, workers simply don't "get along" with the boss or the foreman. Disagreements over performance of the work, allegations of incompetence, negligence, insubordination, infraction of shop rules, and the like, and purely personal frictions lead to discharge, and the dismissed worker is likely to be unable to get another job immediately. Exactly how much time is lost as a result of such factors and those described in the preceding paragraphs is, of course, not known. Much would depend, for example, on general business conditions; it is obviously easier to get a job during good times than during a depression. But it would undoubtedly be advantageous if the maladjustments in the labor market could be eliminated.

Casual employment. In his interesting little book, *The Casual Laborer and Other Essays*, Carleton Parker analyzes the psychological attitudes of the prewar worker in the California hop fields. More recently, John Steinbeck in *The Grapes of Wrath* has painted a vivid picture of certain aspects of the lives of workers in the California fruit orchards.⁶ These agricultural workers, together with those employed in logging and lumbering, ice-cutting, and as longshoremen, stevedores, and so on, are properly called casual laborers because their work is of a casual nature. They are not likely to be employed at any one place for more than a few weeks. The short harvesting season over, casual agricultural laborers must be on the move to some other place. Longshoremen work when boats come and go; the work is highly irregular—a few days of activity are likely to be followed by weeks of idleness. Obviously, a very large percentage of the time is spent out of work or looking for it.

Seasonal industries. There are practically no industries in which production is carried on at an even pace throughout the year, especially if we consider the fact that in plants of any size there is likely to be a shutdown for at least a week or so in order to take inventory and make needed repairs to machinery. Naturally industries vary widely in the proportion of slack to active periods of production. In some cases, the amplitude of the fluctuation from the peak of activity to the trough of dullness is relatively small; in others it is very great. The bulk of the manufacture of furs, for example, takes place in a relatively few months, and much the same is true of other articles of apparel such as ladies' dresses, coats and suits, overcoats, men's clothing, and the like. Between Thanksgiving Day and Christmas, retail

⁶ For a more factual discussion see Carey McWilliams, *Factories in the Field*. Little, Brown & Company. Boston. 1939.

shops do very much more business than in any corresponding number of days throughout the year. In the construction industry, the overwhelming portion of the work is done in the spring and the summer; during the winter, there is practically no building.

Seasonal fluctuations in production exist for a variety of reasons. Often the weather is the determining factor. It is difficult to perform many building operations during cold or rainy spells, and even though various technological improvements have enabled builders to overcome some of the handicaps enforced by the weather, it is still true that the spring and summer are preferable for construction. Industries subject to rapid style changes are also subject to sharp seasonal variations. In the manufacture of women's clothing, for example, a producer literally does not dare to produce more than a few days or weeks ahead of the sale, for he has no assurance that the goods he is making will meet with consumer acceptance. In the automobile industry, the almost universal insistence on the production of new models each year, different in some minor detail perhaps, brings about a sharp spurt at the time of the automobile show or during the spring buying season. The months before the new model is to appear are almost invariably dull, and the plant is often completely shut down except for the work required in preparing for the production of the new model. Holidays and special occasions, such as Easter, Christmas, Mother's Day, and the like, also serve to accentuate production of certain types of commodities at certain periods of the year.

Whatever the reason for seasonal production, however, one thing stands out clearly: workers engaged in such occupations must either be unemployed for part of the year or transfer into some other occupation. It is occasionally true that a short working period is compensated for by a high hourly or daily rate, but in the majority of cases the high rate merely obscures the fact that total annual earnings are pitifully inadequate.

Technological change. Charles Dickens and Gerhart Hauptmann, to mention only two writers, have portrayed in telling manner the effect of the introduction of machines on craftsmen, and Professor Barnett, in his *Chapters on Machinery and Labor*, has described the efforts of various labor organizations to exclude, or at least to control, the machine. Even before 1929, there was considerable discussion in the United States of the amount of unemployment created by technological change, and during the depression agitation increased to the point where many urged that one of the ways to attain recovery was to close the patent office and declare a moratorium on all inventions. What are the facts?

A brickmaking machine can turn out over 40,000 bricks an hour, whereas under the old methods with human labor only 55 bricks could be produced. This means that one worker can do with the help of the machine what 727

workers, without the machine, used to do. In the loading of pig iron, recent inventions have enabled 2 men to do the work of 126. In the papermaking industry, a single machine takes the place of over 125 workers. One machine for making electric light bulbs can turn out as many as 1,000 workers used to make. A giant web press can today print, fold, and count over 40,000 24-page newspapers an hour, about 3 times the production of the average web press of 30 or 40 years ago. In a study for the Works Progress Administration entitled "Unemployment and Increasing Productivity," it was shown that, on the whole, man-hours per 100 units of output have declined from 100 in 1920 to 56 in 1934; in other words, only half as many men are now required to turn out a given quantity of production as were required in 1920. Hence if we were producing as many goods now as we were then we would have still many millions of unemployed.⁷

Though the improvement in machine processes has usually served as the symbol of technological change, it is not the only factor which is responsible for technological unemployment. Sometimes it may be the introduction of a whole new industry; such, for example, was the case of the automobile which ruined the carriage industry. The advent of radio did a good deal of damage to the talking machine, and the effects of television will no doubt be felt keenly by a number of other industries. The competition offered by motor vehicles hurts the railroads and is responsible for a large portion of the current difficulties of that industry. There is no telling, moreover, what effect further improvements in air transportation will ultimately have.

Internal improvements in production technique must also be considered as part of technological change. Better arrangement of tools and machinery, better planning and routing of the work, more effective supervision, offering of special incentives to workers and foremen, and the like, often result in considerably greater production per man-hour.

An increase in the pace at which work is done, which is especially possible where production is highly mechanized and the gait is set by management, has the same result as the introduction of a completely new machine or process. Textile workers have long complained bitterly at this stretch-out, and in the automobile industry the friction between men and management over the speed-up of the belt line has often resulted in recent years in "quickie" sit-down strikes.

That there has been an enormous increase in the productivity per man-hour of work is undeniable, although it is often difficult to measure changes in productivity accurately. And it is well that there should be constant changes in productive technique and constant increases in the volume

⁷ David Weintraub, in National Resources Committee, *Technological Trends and National Policy*. Government Printing Office. Washington, D. C. 1937. P. 78. See also pp. 67-87.

of production per man-hour. It is this which makes possible the manufacture of a growing supply of goods, the only true measure of national wealth.

But what are the costs? Do they exceed the benefits? Does technological change result in unemployment? If so, is the unemployment protracted? Answers to these questions are still largely veiled in clouds of theory. If we look first at long-run effects, we note that over a period of several decades technological change has generally resulted in an increase rather than a decrease in the number of jobs, and it is argued that there is no reason to doubt that the same will hold of present and future technological improvements. This answer flows from the following line of reasoning: (1) technological change, by permitting the same workers to produce more goods or fewer workers the same quantity, results in a lowering of the unit cost of production; (2) the reduction in cost is passed on to the customer in the form of lower prices; (3) the customer is then able to buy more goods with the same amount of money, or, if he does not wish more of the same, to use a hitherto unavailable part of his purchasing power for some other goods; (4) this means an increase in production either in the industry in which the change took place or in other industries, which (5) results in an increase in the volume of employment.

Fundamental to this argument, however, is the assumption of active competition which forces the producer, in an attempt to capture as large a share of the market as possible, to pass the savings on to his customers. But suppose the industry is dominated by one large firm or by a number of large firms? In such a case, the same compulsion may no longer be said to exist. Whether prices will actually be cut as costs are reduced will depend in large part on the type of commodity. If a slight cut in prices will bring in many more customers, the prices are likely to be reduced, but if no great increase in the number of customers is expected to result from concessions in price, the old price is likely to be maintained, and the entire benefit from the cut in costs will accrue to the producer. In general, then, it may be said that in a competitive industry reductions are more likely to be passed on than in a monopolistic industry, and that in the latter case they are more likely to be passed on if the commodity is one for which the demand is elastic.

Regardless of the long-run effects of technological change, the short-run effects are almost certainly disadvantageous to the worker. If he loses his job, he is not likely to be comforted by the knowledge that fifteen or twenty years later, when all the returns are in, two men will be working in his place. The worker's thoughts and concerns are necessarily short-run. He must have a job and a wage today or face the unpleasant consequences. If he loses his job, he may not get another for months or years, perhaps never. Look, for example, at the musicians who were employed in moving-picture houses, or at the vaudeville actors, or at the silent-film stars who could not succeed in the

talkies, or at the coal miners. It is the immediate, rather than the ultimate, result of technological change which accounts for the great hostility of labor toward technological innovations.

Depressions. The decade which followed the stock-market crash of 1929 was an excellent laboratory demonstration of the havoc which a depression can work on a nation's economic system. Of the millions who lost their jobs in 1930-32 and have never been able to regain them, and of the other millions who attained working age after the depression had begun and have not yet experienced gainful employment, the great majority can attribute their difficulties to the depression. This is not the place to discuss the theories of the business cycle. It is sufficient to indicate that the downward swing of the cycle causes unemployment and engenders a situation in which unemployment in one field creates unemployment in a second. This, in turn, aggravates the situation in the first. Suppose that the automobile industry has come upon hard times, and finds itself increasingly unable to sell its product. At once a large number of workers are cast adrift. Simultaneously, the automobile companies sharply reduce their purchases of steel, glass, rubber, cotton and other commodities. As a result, large numbers of steel, glass, rubber, cotton and other workers are added to the unemployed automobile workers. With the cessation of income, the workers' purchases necessarily have to be curtailed. They buy less clothing, less or cheaper food, and, perhaps, move to cheaper quarters. The depression now begins to be felt in the clothing industry, in the food industry, by the landlords, and so on. Each of these in turn begins to contract as far as possible, and so the effects spread throughout the economic system in ever-widening circles so that virtually no portion is left wholly undisturbed. The miner cannot buy shoes because the steel companies are not buying coal; the steel companies are not buying coal because the automobile companies are not buying steel; the automobile companies are not buying steel because the shoe workers are not buying automobiles, and the shoe workers are not buying automobiles because the miners are not buying shoes. In this manner, millions lose their jobs and their livelihood, and the nation is faced with a problem whose magnitude and complexity stagger the imagination.

Other causes of unemployment. Joblessness may also be brought about through causes other than those discussed above. Even in good times, hundreds of firms fail or go out of business weekly; many of these have employees who are thus left jobless. Second, there is a constant shifting of industries from one town to another and from one geographical region to another. A Northern manufacturer who moves his plant to the South may leave hundreds of unemployed in his wake. Third, great combinations of capital are often able to eliminate many workers who would be needed in smaller plants. One of the prime incentives to combination is often the expected sav-

ings in labor. If, for instance, the Northern Pacific and Great Northern railroads should merge, the elimination of duplicated services would lead to the dismissal of hundreds of workers in the absence of legislation or agreement to the contrary. Fourth, the strategy of marketing may force the temporary shut-down of a plant. In 1927, for example, tens of thousands of workers in the Ford Motor Company were laid off because the competitors of this company had temporarily produced a better automobile and were making serious inroads on the Ford market. The result was that the Ford plant closed down until it could turn out a new model which would again appeal to the American public. Finally, there are sometimes unaccountable changes in taste and consumer demand which may leave a whole industry stranded. With the growing tendency of men to go bareheaded, at least in the summertime, the hat industry in general, and the straw-hat industry in particular, suffered a severe blow. The tendency to eat less food, especially at breakfast, affects adversely a variety of industries. Similarly, if more women should adopt the practice of not wearing stockings in the summertime, the hosiery industry would undoubtedly suffer.

THE SOCIAL SIGNIFICANCE OF UNEMPLOYMENT

Herbert Hoover, while president, once remarked, "If our moral and economic system is to survive, we must solve the problem of unemployment." The effects of unemployment are felt by all classes and groups. While workers are hit hardest of all, because their jobs and livelihoods are taken away, businessmen also suffer because of curtailed consumer purchasing power, and the public is now compelled to support vast relief programs. What the exact economic cost of unemployment is no one knows. But, if we recall the figures on lost employment which were given in Table 9 (page 36), we may translate them into lost wages and salaries. People partly employed also lost part of their wages, and almost all employed people had their wage rates cut. These losses taken together averaged over \$13,000,000,000 a year during 1930-38. The yearly record can be seen in Table 10.

Unemployment is an economic loss; men are idle and in most cases machines are idle too. National income falls short of what the country has shown itself able to produce. Of far greater consequence, however, are the human losses which flow from unemployment. Under conditions of modern large-scale production, the worker is dependent to a much greater degree than formerly on the money income which he gets from his job. When men worked largely at tilling the soil, and occasionally engaged in some domestic production for a merchant-capitalist, loss of the industrial employment was inconvenient and undesirable but seldom overwhelming. The worker still had his home and his farm; his plane of living was lowered but he was not actually

exposed to hunger and suffering. Today the only source of income is the wage or salary; with this the rent is paid, food and clothing are purchased, and some few "luxuries" made available. When the job disappears, income likewise disappears, and the worker is compelled to fall back on his pitifully inadequate bank account. That failing, the only recourse is debt or public or private relief. Every possible item is cut from the list of family expenditures; the results of this cutting are harmful, and frequently disastrous, to the individual, to his family, and to society.

TABLE 10
SALARIES AND WAGES LOST IN DEPRESSION IN NONAGRICULTURAL OCCUPATIONS

Year	Salaries and Wages Paid	Loss from 1939
1929	\$49,260,000,000	—
1930	45,453,000,000	\$3,807,000,000
1931	38,299,000,000	10,961,000,000
1932	29,941,000,000	19,319,000,000
1933	27,479,000,000	21,781,000,000
1934	31,138,000,000	18,122,000,000
1935	33,672,000,000	15,588,000,000
1936	37,418,000,000	11,842,000,000
1937	42,086,000,000	7,174,000,000
1938	38,500,000,000*	10,760,000,000*
Total loss, 1930-38		\$119,354,000,000

* Estimated.

Investigation of Concentration of Economic Power. Hearings before the Temporary National Economic Committee . . . 75th Congress, 3d Session . . . Public Resolution 113. Government Printing Office, Washington, D. C., 1939. Part I, p. 196, Exhibit 10. Testimony of Commissioner I. Lubin, Bureau of Labor Statistics. Source of basic data: Estimates of "monthly income payments," showing compensation of employees in nonagricultural industries, made by the National Income Section of the Division of Economic Research of the Bureau of Foreign and Domestic Commerce, Department of Commerce.

Take, first, the matter of health. Unemployment is likely to result in underfeeding, disease, and death. Of course, coroner reports show few people as having died of starvation. Instead, they are weakened by undernourishment until disease strikes them down. Few Americans realize what unemployment does, for instance, in the matter of milk consumption. In New York City alone the depression of the 1930's meant a million quarts less of milk sold each week. A study by the Children's Bureau in the 1921-22 depression showed that the amount of milk used by the unemployed or partly employed fell by a half. It probably fell even more in 1932.

It seems probable that the general vegetable content of the diet is also reduced, although not as much, and that the consumption of clothing and fuel is drastically curtailed. The report of the federal Children's Bureau covering

Racine, Wis., and Springfield, Mass., showed that a drastic change in living standards had occurred during the depression. With the virtual disappearance of income, every item of expenditure was cut. Poorer quarters were rented and less and poorer food was consumed, with the result that the rate of illness increased perceptibly.

A common sight in many of our larger cities during the height of the depression were the "Hoovervilles," colonies in which the homeless lived in makeshift shelters created largely out of wooden packing cases, driftwood, and old tin cans. Daily the garbage dumps were picked over for refuse which might be eaten, and even the smallest scraps of discarded food were seized upon eagerly.

Besides the cost of health and illness, there are the *moral costs*. Sometimes several families have to share one apartment. This causes domestic difficulties and encourages immorality and family breakdowns. America leads the world in broken homes, even in normal times, but in periods of unemployment the home is subjected to especially severe tensions. Not least of these are the loss of self-respect on the part of the husband who can no longer provide for his family, the added strain on the wife who must take in washing or do any other work she can secure, the increased psychological tension in the home, the burden which the children carry. Is it any wonder that homes break down? Since divorce is expensive and difficult, separation and desertion tend to increase during a depression unless a substantial amount of relief money is available. Unemployment also plays a significant role in increasing crime. Statistics show that crimes against property increase greatly during depressions.

Perhaps more serious is the effect of unemployment on morale. Our modern civilization operates on a system of rewards and punishments; we are taught that to work is good, and that to be idle is bad. Almost from the very cradle we have been inculcated with the work habit, so that when we become of age we turn almost instinctively to work at some gainful occupation or other. Society holds up to scorn and contempt those who do not work, so that we come to think of work as the normal, "natural" state. When the worker is unemployed, the effect on his morale is profound. Not to have a job is to lose caste, is to appear to society as a failure, as one who simply cannot make good.

It has become fashionable in certain quarters to sneer at the unemployed on the ground that they don't want to work anyway. This same attitude appears in a slightly modified form in the opposition to unemployment insurance and relief which, it is argued, tend merely to pauperize the recipients by depriving them of the drive to work. What should be remembered in this connection, however, is that it is the lack of work rather than the receipt of relief or unemployment benefits which does the pauperizing. That there

are many idle people who are unemployable in the sense that they don't want to work is probably true, and it may also be true that some of these, perhaps the majority, receive assistance from public or private sources. But the unwillingness to work is due far less to the relief which they get than to the fact that they have been out of work so long that they have quite lost the work habit. "Use it or lose it" applies not merely to the skill which is the worker's stock in trade but also to the very desire to work. Our whole industrial civilization is founded upon an abundant supply of free, willing labor. If as a result of unemployment, people should lose the desire to work and become willing to subsist on whatever public or private assistance they can get, the effects on society will be disastrous.

Unemployment is also likely to breed a spirit of rebellion against society and its institutions. Men and women who are left virtually destitute because their jobs have disappeared may well compare their plight to that of the much more fortunate propertied classes, and conclude that a society which permits such gross inequalities is not a just society. It is, of course, true that fundamental attitudes are not changed quickly, and that people who throughout their lives have accepted a given society as the "natural order" will not suddenly abandon this position and demand the overthrow of the system. But it is equally true that the unrest created by unemployment presents an ideal breeding place for the germs of social discord. British realists are said to have referred to unemployment insurance as revolution insurance.

Unemployment destroys the youth of the nation. Boys and girls become of working age and find that there are no jobs available. Years may be spent without the knowledge of what it means to work for a living. Children cannot continue to see their fathers and mothers suffer because of the lack of essentials without trying to do something about it. They leave school to seek work. They take to the highways and the freight trains. They become tramps. They join the great army of wanderers across the United States. What these boys will become ten years from now can hardly be estimated. It is certain, however, that the United States will be paying the price of this unemployment in added crime and weakened character for several decades, even if adequate measures could be taken to stop it now.

REMEDIES PROPOSED FOR UNEMPLOYMENT

Books III, IV, and V of this volume will deal with the measures suggested for solving the unemployment problem as well as with the actual steps which have been taken to alleviate the hardships caused by unemployment. It is sufficient for our present purposes to indicate that trade-unions, employers, and the government have all been actively concerned in greater or less degree with attempts to solve the problem. Public works programs,

unemployment insurance, home relief, reduction in the hours of work, and the establishment of employment exchanges are among the reforms proposed. Whether or not these will work or need to be supplemented by other devices, it may be said that some solution will have to be found if our society is to survive.

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QUESTIONS

1. Which one, if any, of the following is "unemployed" in the technical sense:
 - (a) A man of seventy who has worked all his life in a coal mine but is now no longer wanted?
 - (b) A man who is out on strike?
 - (c) A man who is a mental defective and can't find work?
2. Assuming that there was no unemployment in North America before the coming of the Europeans, when did unemployment begin and why?
3. Is unemployment normal in society? If so, when does it become abnormal?
4. Is there any country which does not have unemployment? How was it prevented?
5. What are the results of unemployment?
6. Describe any case of unemployment which you are familiar with.
7. What do you think is the best method of taking care of the unemployed?
8. What are the causes of unemployment? Which of these causes are now making unemployment in your community?
9. In the long run who loses, and who pays the cost of unemployment?
10. What are the soundest steps to take to eliminate it?

4 INDUSTRIAL ACCIDENTS, DISEASE, AND OLD AGE

UNEMPLOYMENT has its peculiar significance as a result of the fact that its most serious consequences are those connected with the loss of income. Clearly, there is a great loss to society if labor power capable of producing goods is idle; the sum total of goods and services is the only real measure of economic progress, and anything which reduces this total is disadvantageous to society as a whole. It is equally clear that idleness may have bad effects on the morale of the individual. But neither the loss of productive power nor the harmful effects of idleness on morale can compare in seriousness with the loss of income. For if the worker could somehow secure continuity of income throughout periods of joblessness, most of the distress consequent on unemployment would be obviated. It is this which is the true measure of unemployment and which explains why unemployment is usually discussed as part of the problem of insecurity—insecurity of income.

Unemployment is not, however, the only cause of worker insecurity. Outstanding among the other factors which interfere with the continuity of income are industrial accidents, occupational disease and sickness, and superannuation.

INDUSTRIAL ACCIDENTS

In 1930 more than 100,000 deaths, about one-tenth of the total for the country as a whole, were due to accidents. In addition, 10,000,000 nonfatal accidents caused temporary or permanent disability. Perhaps one-fourth of

these were in industry. If some sudden calamity, such as a flood or a fire, causes 5,000 deaths and millions of dollars of property damage, the country is aroused from coast to coast. We do not realize that industrial accidents, like unemployment, play far greater havoc and go on steadily year in and year out. The World War appalled us by its terrific carnage, but there were actually more workers killed and injured in the United States through industrial accidents during the World War than there were casualties in the American Expeditionary Force.¹

If we could visualize the casualty list from accidents in modern industry we might see this shocking picture: 34 miles of corpses, lying end to end, of those killed in industry each year; a pile of 12,940 arms and legs capped by 17,000 lost eyes,—a mountain of human flesh sacrificed to the machine. In addition he would see an army of some 80,000 permanently disabled workers who could never be as useful again. If we could survey all American industry while it was operating, we would observe 10,000 more being injured for every single working day.

When the *Lusitania* was sunk, it shocked the nation. Yet, year in and year out as many die in industry, every fourteen days, as lost their lives on the *Lusitania*. The champions of peace tell of the frightful prospect that modern war holds for us. We should be no less well aware of the casualties constantly occurring in our industrial process. As a matter of fact, more have been killed in industry in the United States since the founding of our republic than have been killed in all the wars in which the United States has been engaged.

Improvement has been made in decreasing accidents in the past decade, as the chart below reveals:

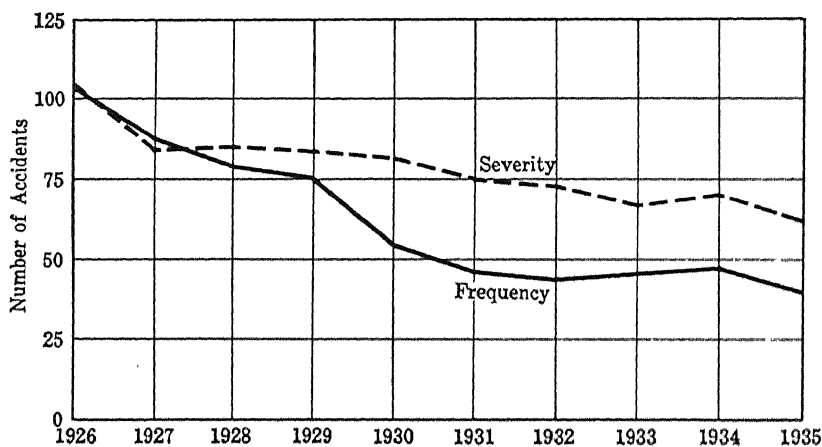


CHART I.—Severity and Frequency of Accidents.

¹ E. H. Downey, *Workmen's Compensation*. The Macmillan Company. New York. 1924. P. 1.

The United States still has about twice as high a record as Great Britain, France, or Germany. The worst killers have been the mines, which bring death to approximately two thousand miners each year. In industry the accident rate has been decreased some 77 per cent in the past thirty years. A great deal of this is attributable to safety campaigns which have been conducted by employers, but the relatively high rates of United States industry as contrasted with that of Europe show how much remains to be done.

H. W. Heinrich of the Travelers Insurance Company has estimated the cost of accidents, both direct and indirect.² By direct costs he means the amount of compensation paid, the cost of hospitals and doctors, the administrative costs of state compensation boards and legal expenses in the courts. He puts the direct costs at \$900,000,000 for 1930. The indirect costs consist of time lost after the accident, the cost to the employer because other employees stop work during the accident or afterward, the cost of time lost by foremen and executives in connection with the accident, the cost of time spent by medical men, unless this is paid for through insurance, the cost in damages to machinery and equipment, the cost due to stoppage of production, the cost under employee benefit systems, the cost in having to pay full wages to the employee after he has been hurt, the cost arising from impairment of work due to the accident and from lowered morale, and, finally, the extra overhead costs while the injured man is away from the job. Mr. Heinrich estimates that the indirect costs are several times as great as the direct costs, and that they reach the staggering sum of \$4,000,000,000. Together direct and indirect costs come to the stupendous sum of \$4,900,000,000.

All statements about the cost of accidents must be at best mere approximations since, unfortunately, we do not know with any degree of exactness how many industrial accidents occur in the United States each year. In part, this lack of information is attributable to the failure of some states to gather and publish comprehensive data on accidents. In part, too, it is attributable to the different standards employed in different jurisdictions. Some states, for example, will count as accidents only those injuries which incapacitate the worker for several days or a week. Some states whose workmen's compensation laws do not extend to employers of less than, say, four men will omit in their tabulations accidents occurring in these small establishments. In a number of instances occupational diseases are counted as accidents while in others they are either counted separately or not at all. Moreover, if industries, such as agriculture, are excluded, the data will understate the actual number of accidents.

But even though we do not know the precise number of accidents, we

² *Proceedings* of the Seventeenth Annual Meeting of the International Association of Industrial Accident Boards and Commissions, U. S. Bureau of Labor Statistics. Bulletin 536, 1931, pp. 171-79.

know enough to realize that the problem is a grave one. It is likely, on the basis of such data as we have, that the number of fatal accidents occurring annually in the United States will run between 15,000 and 25,000 and that there will be a similar number of cases involving permanent and total disability. Of disabling but less serious accidents, there are probably between 2,000,000 and 3,000,000 in the United States each year.

Public agencies dealing with industrial accidents have come to realize the need for basic information as a preliminary step in the direction of reducing accidents. In the United States, under the leadership of the International Association of Industrial Accident Boards (I.A.I.A.B.) progress has been made in securing an approach to uniformity in methods of reporting accidents. Industrial accidents are now usually defined as an injury arising in the course of or out of the employment, resulting in the loss of working time in excess of the balance of the day or shift on which the injury occurred. Under this definition an injury which does not prevent the worker from returning to work the next day is not counted as an accident, even though several hours of work may have been lost on the day the injury occurred. Though this definition excludes these minor injuries, it does serve as a point of departure for the study of accidents and furnishes at least a standard for the interpretation of accident data.

Accident frequency. The most obvious measure of accidents is the number or the frequency. The frequency rate, urged by the I.A.I.A.B. as a standard, means the number of accidents which occur for each million working hours. For example, if 25,000 men worked 40 hours a week for 4 weeks and there were 50 accidents, we would first calculate the number of man-hours of exposure, which would be $25,000 \times 40 \times 4$ or 4,000,000 working hours. Since 50 accidents occurred during 4,000,000 working hours, the rate for each million would be 12.5—and we would speak of this as the frequency rate. Among the industries with relatively high frequency rates are construction, mining, especially coal, paper and pulp manufacturing, slaughtering and meat packing, foundry and machine shop products, and lumber and planing mills.

Accident severity. More important than the frequency rate is the severity rate: that is, again using the standards of the I.A.I.A.B., the loss caused by accidents of working days per 1,000 working hours. Clearly, an accident which results in disability lasting for several years is far more serious than one which means the loss of only a few days. Some industries, mining for example, are man-killers, while others, such as clothing, will have relatively few serious accidents. One problem which is involved in the use of severity rates arises out of fatal accidents or accidents resulting in some sort of permanent disability. How many days' loss shall be attributed to the death of a worker? To

a worker who is paralyzed as the result of an accident? To one who has lost an eye, or a leg, or a finger? On this subject the I.A.I.A.B. has set down arbitrary standards, but standards which give us an opportunity to measure the hazards of various industries. Death, total blindness, the loss of both arms, both legs, or an arm and a leg, and the like, are counted as resulting in a loss of 6,000 working days (presumably on the theory that the average worker who is thus killed or permanently disabled will have been capable of 20 more years of work at 300 days a year). The loss of an arm or a leg is counted as 4,000 days, loss of a hand as 3,000 days, loss of an eye as 1,800 days, and so on.³ If these standards were used universally, we should be in a position to make definitive comparisons among the different industries and among the different countries, even though a few minor questions of accurate compilation would remain.⁴

Causes of accidents. Many industrial accidents are caused directly by employers' negligence and unwillingness to spend the necessary sums for safety devices. Improper instructions for the performance of hazardous jobs, faulty arrangement of machines with insufficient clearance between them, the use of antiquated and unsafe tools and appliances, and the lack of sufficient care in making the working place safe all contribute to the total of accidents. If employers would procure and make available guards around machines and use precautions in planning production, a sharp reduction in accidents should be expected. As a matter of fact, the safety campaigns arising largely from workmen's compensation laws have already had a noticeable effect in this direction.⁵

Numerous other accidents are traceable to the carelessness and indifference of employees. Even where goggles and other safety devices are provided, workers may display a recklessness which invites accidents. Sometimes workers have been known to remove guards around the machinery, though this is commonly caused by the fact that the guard slows up production, which means a loss in wages on piecework. Fatigue due to overlong hours also contributes to accidents, as does ignorance of the best methods of doing the work.

No matter how diligent employers and employees may be in safety work, there will still be a large residuum of accidents. In the very nature of modern production, in the tempo of work, and in the materials which are used, there

³ See Barbara N. Armstrong, *Insuring the Essentials*. The Macmillan Company. New York. 1932. P. 172.

⁴ There is every good reason why loss of both eyes should be counted as 6,000 working days while the loss of one eye to each of two men should be counted together as only 3,600 days, since in the former case the result is total disability, while in the latter it is partial disability. But suppose a worker already blind in one eye should lose the second eye in an accident, or a one-legged worker loses the second leg, and so on? Shall we, in considering the later accident, ignore the existence of the partial disability before the accident?

⁵ See Book IV, Chapter 22.

is inherent hazard. If we are going to mine coal, manufacture steel and automobiles, cut lumber, and build skyscrapers, we are going to have accidents, and there is no scheme known to man which can prevent them. All we can hope for is to wipe out those accidents which can be eliminated and then to make adequate provision for the financial support of those who are hurt or killed despite our best efforts.

OCCUPATIONAL DISEASES AND SICKNESS

On the average, roughly 3 per cent of the population are confined to their homes by illness all the time. The average worker loses about 7 days of work a year because of illness, which means a total of approximately 350,000,000 lost work days per year. Furthermore, the burden of this does not fall equally on all. Some may lose an entire year while others lose not even a day. Again, there are those who are disabled permanently by chronic illness, those who recover, and those who lose their lives.

Because of exposure to unfavorable conditions in industry, and because of the poor food that goes with intermittent unemployment, sickness is more frequent among industrial workers than among any other group. The Committee on the Costs of Medical Care finds that the overwhelming majority of the people do not receive adequate medical assistance. Less than 7 per cent of the people have physical examinations. One-half of those in the lowest income groups receive no professional medical or dental care. Yet for medical and dental care and pharmaceutical supplies the American people pay each year more than \$3,500,000,000.

Nearly every occupation is a potential maker of illness although agricultural work under proper conditions is generally healthful. The United States Bureau of Labor Statistics records over seven hundred occupations that may cause disease and declares that the health of nearly fifty million wage earners may be affected by their working environment. The various causes may be divided into the following headings:

Exposure to excessive heat and cold. In certain of the steel mills and blast furnaces in the United States the temperature may reach heights that endanger life.

Extreme temperature changes. In some plants in the United States workers are subjected to high and then normal or subnormal temperatures at different points in the industrial process. Such constant fluctuation is extremely difficult for the body mechanism to withstand, even though it has its own thermostat regulating body temperature.

Abnormal humidities. Workers who have to toil in either excessive dampness or dryness are especially subject to illness. Spinning and weaving necessitate damp air, which predisposes the workers to tuberculosis.

Abnormal atmospheric pressure. In building tunnels under rivers, the workers toil in compressed air; too sudden change from high to low air pressure causes the formation of bubbles in the blood which may cause deafness, paralysis, and death.

Exposures to harmful quantities of toxic or irritating dust, fumes, or gases. In a great deal of foundry work, polishing, jewelry work, or in the mines and stone quarries, inorganic dusts are thrown into the air, which, when inhaled, cause severe irritation of the lungs and may often result in tuberculosis or other diseases. Anthracosis, miner's asthma, is a chronic disease of the lungs in which the lung tissues become peppered by scar tissue caused by breathing excessive amounts of coal dust. This disease can be prevented by keeping as much dust out of the air as possible. In hard-coal mining there is usually a heavy concentration of fine silica in the air, but if the coal is kept wet and there is proper ventilation, dust concentration can be kept down.

Other forms of silicosis occur in the abrasive powder, blasting, brick, core making, enameling, foundry, glass, granite, metal grinding, mining, pottery, sand pulverizing, slate, soap, stone finishing, and tunneling industries. Organic dusts which occur in cotton, tobacco, flax, paper, and flour mills are also dangerous.

Workers are exposed to dangerous carbon monoxide gases in the following industries or in industries which use special types of machines included in the list.

Acetylene torch working, baking, blast-furnaces, blasting, blocking (felt hats), brick burning, carbide making, charcoal burning, charging (foundries), coal-tar works, core making, drying-room works, flue cleaning, foundries, garages, gas works, kilns, lime burners, linotyping, methane (synthetic) making, mining, monotyping, patent-leather making, puddling, phosgene making, refining (metal), sewer working, steel and iron working, stoking, smelting, wood-alcohol distilling.

Workers who are engaged in mixing cement and vulcanizing rubber, manufacturing and using lacquers, as in the automobile trade, perfume making, electroplating, degreasing operations, dry cleaning, and manufacturing fire extinguishers, may be subjected to the danger of carbon tetrachloride poisoning. This may cause infection of the skin or fatal congestion of the lungs. Inhaling a sufficient amount of the fumes results in unconsciousness; chronic exposure leads to fatty degeneration of the liver and to nervous disturbances.

The worker may be subjected to carbon disulphide poisoning, which is

dangerous chiefly to the nervous system, and may cause permanent mental disturbance. This poisoning may occur in factories making artificial silk, explosives, and insecticides; processing cellulose; mixing, drying, reclaiming, and cementing and vulcanizing rubber; extracting sulphur; and preparing enamels. The fumes, when inhaled, have somewhat the same effect of chloroform, but the poisoning usually results from prolonged exposure to small amounts of the fumes.

Poisons absorbed in ways other than inhalation. The handling of molten metals, acids, alkalis, or other agents often causes injury through contact with the skin. Lead poisoning is the chief danger here and attacks those in the printing trade, in lead smelting, and in the manufacture and use of paints. Whenever lead gets into the body it circulates in the blood and is finally deposited in the bones. Lead poisoning is very serious. In plants where phosphorus is used, the latter may get into the workers' blood and attack the bones. Those who are engaged in hat making often have what is popularly known as "hatters' shakes," which they have contracted from being exposed to mercury. Mercury poisoning is likely to affect the following workers:

Acetaldehyde makers, acetone makers (synthetic), amalgam makers, arc rectifier makers, barometer makers, blowers (felt hats), bronzers, cap loaders, calico printers, color makers, disinfectant makers, detonator fillers, detonator cleaners, detonator packers, devil operators (felt hats), dye makers, explosive primers, electroplaters, felt-hat makers, fulminate mixers, fur handlers, fur preparers, gilders, induction furnace workers, lithographers, laboratory workers, manometer makers, mercury-boiler workers, mercury miners, mercury-pump workers, mercury-salt workers, mercury smelters, mercury solderers, mercury vapor-lamp makers, mirror silverers, metal refiners, photographic workers, tannery workers, thermometer workers.

Arsenic poisoning, which attacks the blood and the nervous system, occurs among: acid dippers, arsenic roasters, artificial flower makers, artificial silk makers, balloon (hydrogen) workers, bronzers, chemical workers, color makers, curriers (tannery), cut-glass workers, dye makers, electroplaters, enamel makers, felt-hat makers, fertilizer makers, firework makers, fur handlers, galvanizers, glass mixers, glaze mixers, gold refiners, insecticide makers, lacquer makers, lead smelters, metal refiners, paint makers, Paris-green makers, picklers, pitch makers, rubber mixers, sheep-dip makers, sulphuric acid workers, tinnerns, tree sprayers, wood preservers.

Chromium poisoning is usually caused when the dust, liquid, or vapor of a chromium compound is in contact with a crack or abrasion in the skin. The erosion takes place slowly, and those affected may be entirely unaware of the injury since the condition is usually not painful. Finally the victim gets skin inflammation or ulcers.

It must not be supposed that all the poisons listed do not also attack the lungs and affect the worker through inhalation. There is no clear dividing line between poisons which attack the individual through the skin and those that attack through the lungs. We have made an artificial division but we have not rigidly divided the occupational diseases accordingly.

Excessive noise. In plants where there is excessive noise, the ear is slowly affected. Airplane pilots have been known to become deafened and are later unable to pass the hearing test.

Poor illumination. Faulty or inadequate lighting may cause eye difficulty, blindness, or spasmodic movements.

Besides illnesses which may be caused directly by certain types of occupations and their hazards, there are more general illnesses which may occur because of defective equipment installed by the employer.

Inadequate and unsafe drinking water. Contaminated water may cause typhoid fever, dysentery, or other difficulties. In addition, if proper drinking fountains are not installed, one employee who is ill may infect others who are well. This is true, for example, where one cup is used by a large number of employees, or where the bubble fountain, throwing water straight up and down rather than at an angle, may retain germs after one employee has used it.

Inadequate and unclean washrooms, toilet facilities, dressing rooms, and lunchrooms. It goes without saying that low standards in these matters are very likely to result in sickness and disease.

Inadequate medical supervision and first-aid facilities. It is obvious that where there is no medical unit, accidents, even of a minor nature, may cause infection with serious consequences. Usually the law requires some provision for medical treatment.

From this list it can be seen how dangerous and frequent are the diseases which threaten industrial workers. Unfortunately, statistics are lacking to show the full extent of this problem. No scientific gauge exists as yet to measure illness produced by industry as contrasted to ordinary illness. Thousands of workers annually come down with illness for which they cannot now secure compensation, but which in the future may be recognized as having been primarily caused by their employment.

Employers are often alert to discharge a worker who is below par physically. Workers may therefore lose their positions before they discover that their condition is due to some form of occupational disease. The problem is complicated by the fact that in most instances no doctor can clearly prove that a disease is solely caused by a particular occupation.

Much can be done to prevent illness through legal requirements protecting the worker from dust and industrial poisons. At present society has made only a beginning in this direction. If and when we have complete health insurance, the probability is that employers will find it profitable to spend as much time and effort reducing diseases as they now do in trying to reduce industrial accidents. Even here, however, it is probable that constant vigilance on the part of public authority will be necessary. Furthermore, laws will vary in the different states, making for high protection in some communities and low protection in others.

SUPERANNUATION

We have already referred briefly to the problem of the aged worker in industry and have pointed out that his chances of getting employment are, on the whole, rather slim. There is little room in modern industry for the man who has passed the age of forty-five or fifty. On all sides he hears the same story—"You are too old." Technological changes of the past century and a half have increasingly transferred skill in performing the work from the man to the machine. An ever-growing number of jobs makes no further demands upon the worker than that he be dexterous and quick; the number of unskilled occupations is constantly growing at the expense of the skilled trades. Formerly, when it required years, perhaps even decades, to master the intricacies of a craft, a man of forty-five or fifty was in the prime of his industrial life. Even today, in occupations where skill and experience are important, age tends to be a negligible factor, as in the professions generally and in medicine and law particularly. But in the mass-production industries there is little need for skill on the part of the overwhelming proportion of the men. Most jobs can be mastered in a few days or weeks. What is important now is speed, and speed is the special quality of youth. When speed is gone, the hold on the job becomes very precarious.

Some companies have very frankly adopted a maximum age limit for hiring and reject all applicants over this age. A large number of governmental agencies act similarly, though for a different reason. A larger number of companies, without having any formal rule on the matter, merely refuse to hire people over a certain age.

Other factors besides speed and dexterity may operate to prejudice the position of the older worker. Employers may prefer young men without families or other dependents who can be hired at lower wages than might be acceptable to a middle-aged worker with a wife and children. Or the employer may feel that hiring older workers may result in increased workmen's compensation costs because of the accidents which may occur. And even if it should be established that the older worker is more careful and therefore

less likely to be the victim of an accident, it is equally clear that if he is injured he will be incapacitated for a longer time than a younger man. Again, employers who have established old-age pension plans for their workers have shown, it is said, a marked preference for the employment of young people, on the ground that, if the company is going to give pensions to its men, they ought to put in many years of service with the company. In other cases it is alleged that the older worker does not make a good impression on the customers, as in department stores. Still others assert that older workers are slow to change their habits and have great difficulty in adjusting themselves to new methods of production. Moreover, since employers are as impressionable as the rest of us, they unconsciously exhibit in many cases a marked preference for youth.

The widespread attention this problem has received in recent years, especially since the crash of 1929, has tended to slow up somewhat the process of discharge of older workers. Indeed, many of our largest enterprises boast of the fact that they employ some workers who are over seventy-five and sometimes even over eighty years of age; such boasts are intended, of course, to build up public goodwill by making it appear that the enterprise in question is a corporation "with a soul" and is quite mindful of its responsibilities toward its men. Nevertheless, it is doubtful that the *status quo ante* can ever be restored. For whatever reason, whether it is that younger people will work for less, or make a better impression on customers, or are more flexible, or are less likely to be hurt—the fact remains that in industry today youth is at a premium.

We have now reached the ironic situation in which advances in medical science have greatly prolonged life while advances in technology have shortened the period of economic usefulness. The rate of human obsolescence in industry has been enormously accelerated in the past several decades.

If the middle-aged worker faces such obstacles in supporting himself, what of the man of sixty or sixty-five? There are today approximately six million people who are sixty-five years of age or over. Roughly one-third, or about two million are dependent upon their children, relatives, or the public for support. Consequently, one out of three people who reach the age of sixty-five do not have the means to support themselves.

As the Social Security Board has observed:

The general conviction, that the older worker finds difficulty in either obtaining or keeping employment, and that his problem is a growing one, is supported by findings of several official investigations, such as that made in New York, California, and Maryland. . . .

Both the Maryland and California surveys of age distribution in their local industries indicated that, beginning with the age distribution 40-44 years, there is

a tendency toward lessened employment for wage earners in mechanical and manufacturing industries and in retail trade. With each 5-year age group after 40 years, the ratio in each employment group is less than that in the corresponding population age group.

Surveys of the unemployed in Philadelphia indicate that age is an increasingly important characteristic in the employability of unemployed workers. Among employment office applicants, 34.5 per cent of the men and 23.6 per cent of the women were over 40 years of age. In a sample survey of the unemployed, a larger proportion of men (39 per cent) but a smaller proportion of women were over 40. Among employable persons on relief, a large percentage of both sexes (39.2 per cent for men and 25.3 per cent for women) were over 40 years of age. This cumulation of older unemployed workers on the rolls of the employment and relief offices in Philadelphia is paralleled in other cities. When data for relief and nonrelief applicants in five re-employment and three State employment offices in Pennsylvania are separated, a higher proportion of older workers is found on relief rolls than among nonrelief employment office applicants throughout the State.

Age is, next to occupation, the most important factor of economic significance in the employment or unemployment situation of the individual. The squeeze which has occurred in the upper and lower hiring-age limits *has brought the mass of the working population within the ages of 20 and 40. Forty years may therefore be taken as a convenient line of division for measuring the relative employability of the registrants at employment offices.* . . .

The depression quickly increased the quantitative dimensions of the problem. The unemployment census of 1930 showed that the rate of unemployment among males began to rise most significantly in the older age groups, beginning with 40 to 44 years.

Even in 1930 it was evident that older workers were bearing the heaviest burdens in terms of duration of unemployment. It is believed that a census of unemployment taken at the present time would reveal a greater incidence of unemployment among middle-aged and older workers. . . .

Once unemployed, older workers tend to have great difficulty in finding re-employment and their chances of reabsorption become less and less with advancing age. Analysis of relief figures clearly shows that older employable persons remain on relief rolls longer and experience longer "relief" periods between jobs than do younger workers.⁶

POSSIBLE REMEDIES

As in the case of unemployment, so with industrial accidents, occupational diseases, and industrial superannuation, a variety of remedies has been suggested and tried. Trade-unions, employers, and governments have in their respective spheres advocated and adopted such remedies as workmen's compensation, sickness and accident benefits, health and safety protection, and old-age pensions. These are discussed at length in later sections of the book.

⁶ Social Security Board, *Social Security in America*. Government Printing Office, Washington, D. C. 1937. Pp. 145-46. Italics not in original.

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QUESTIONS

1. Can you supply information on the following?
 - (a) About how many industrial workers are killed every year?
 - (b) What is the approximate loss each year from industrial accidents?
 - (c) What is the strongest force in decreasing industrial accidents?
2. How do you think we might reduce industrial disease? Cite concrete ways and means.
3. Has your state a good law providing compensation for industrial disease? What improvements are needed in it? (If you do not know the provisions of your state law write your state department of labor.)
4. "An employer who allows industrial poisoning to occur in his plant year after year is little better than a murderer." To what extent is this statement true?
5. More American workers were killed in factories in the United States than American soldiers in France during the World War. Who paid the cost of the accidents in the factories?
6. In certain factories the workers who are on piece rate are forbidden to work when the traveling crane is carrying a heavy load overhead. If the rules are broken by the workers and they get hurt are the workers alone responsible?
7. "The costs of an accident should be placed on the individual responsible." "The costs of an accident should be placed on management." Which is right?
8. "We need accident prevention, not accident insurance, therefore, what we need to develop is safety methods." "The safety-first movement is the child of workmen's compensation." Is either of these statements true or false? Give your reasons.

9. Take any factory in your home community, check over the list of occupational diseases. Are any of them present? Could they be prevented?

10. A manufacturer's association has a booklet on "Sickness Insurance or Sickness Prevention." Is the alternative well chosen?

11. In health insurance should the employer, the employee and the state all contribute?

12. When American soldiers went across the seas to fight in France, we provided them with generous insurance policies and bonuses when they returned. The average factory worker is subjected to greater hazards on the whole and yet we do not provide him with the same consideration that we do the soldier. Why?

It is scarcely necessary to point out that the problem of wages is outstanding in the world of labor and that, to many workers, it seems more important than the problem of insecurity. For American labor as a whole, the desire to get what it considers an adequate or a "living" wage probably takes precedence over any other. Wages have ordinarily been a major issue in industrial disputes and seem likely to continue being so in the future. The reasons for the importance of wages are not difficult to determine.

In the first place, wages are necessary to purchase the necessities for everyday living. The modern worker, as we have observed, is completely dependent on his job for his daily bread and butter. Without the job and the wages which come from it, he is certain to be reduced to extreme want.

Second, wages cannot be divorced from the general problem of insecurity. The severity of insecurity is caused in large part by the fact that wages are not sufficient to permit the worker to set aside, during periods of full employment, a sum which will tide him over periods of unemployment, invalidism, and old age. The assertion that improvidence is the cause of dependent old age thus ignores the fact that wages normally do not permit savings.

Third, we cannot overemphasize the fact that in our society money is not merely purchasing power; it is also a mark of prestige and of status. We desire to make much money less because we expect to spend it for luxuries than because society places a high value on those who have money and a low value on those who do not.

The thinking of American workers on the subject of wages is largely conditioned by these three factors. Higher wages present the opportunity for improvement of the standard of living, for protection against the ravages of unemployment, and for raising one's social position. The community as a whole may not be especially concerned with the question of the relation of wages to the worker's social position, but it can scarcely ignore other implications of low wages. If low wages lead to a very low standard of living, to malnutrition, and to high disease and infant mortality rates, the public is vitally affected. Further, if the low wages of the chief breadwinner make it necessary for the wife and mother to seek employment, thereby taking her away from the care of home and children or saddling her with a job in addition to her other responsibilities, or if children are compelled to go to work at an early age, the results for the whole community are unfavorable. Another series of social problems is likely to be generated if low wages cause young men and women to delay marriage and make people fearful of the economic burden of parenthood.

WHAT ARE WAGES?

In Book IV there is an extended treatment of methods of wage payment.¹ Here it is sufficient to say that by wages we mean the compensation paid to all workers in office, industry, shop, mining, agriculture, construction, power, wholesale and retail trade, and governmental service who are below the rank of foremen or supervisors. Wage rates, however, must not be confused with earnings. The wage rate refers to the amount paid to the worker per unit of output if he is on a piecework basis, or per unit of time if he is paid by time. Earnings refer to the amount of money which the worker actually receives—this is the product of the rate multiplied by the quantity of production or the time worked, as the case may be.

High wage rates do not necessarily indicate labor welfare. In the building trades, for example, high hourly rates for craftsmen are common, but the total yearly income may be quite small because of the seasonal nature of the industry. This is also true for coal miners, garment workers, and the like. The fact that high rates do not always mean high earnings has been used to attack union wage scales. Thus it is argued that if unions in the construction field, for example, would agree to lower hourly or daily rates, there would be more building, and earnings as a result would be much higher. Unions, and workers in general, have been very reluctant to make such concessions because they doubted that any real benefits to labor would result. Very recently, however, some unions have implied that they would "go along" if there were a *guaranteed annual wage* under which the worker

¹ See Chapter 23.

is assured at least a minimum income for the year. The introduction of such a guaranteed wage would, of course, go far to dispel doubts of organized labor. It has been widely discussed in the building trades, where high rates have been especially attacked, but nothing of importance has yet been done.

Fundamentally, the real need is for a *steady* wage which would continue year in and year out. The year as a standard in the discussion of the guaranteed wage is better than the week or month, but it still falls far short of meeting the situation adequately. Accountants have recognized that the use of a year as a basis for financial statements and income accounts is an arbitrary and artificial device which fails to give definitive pictures of the *long-run* earnings or prospects of the business. The same is true of wages, for the worker has to maintain himself and his family not merely this year but also in the future. The most comprehensive approach would be one which would attempt to approximate the worker's lifetime needs, or, more practically, to assure the *continuous* payment of an *adequate* weekly or monthly wage.

Our habits being what they are, a sharply fluctuating income, even within a single year and even though the total is adequate, is less satisfactory than the same total divided into equal weekly installments. We are notoriously poor budgeters and spend when we have the money; hence we often fail to accumulate during the active period of the year enough to tide us over the dull period.

Just as wage rates do not of themselves mean that labor is well off, so the money earnings—money wages or *nominal wages* as they are called—do not tell the whole story. Attention must rather be centered on the *real wages*, that is, on the purchasing power of the money wages, for a rapidly rising price level may more than overcome a rise in money wages. In postwar Germany workers received fantastic amounts in wages during the period of inflation, but since the money was scarcely worth the paper it was printed on, workers as a group suffered acutely. During the World War period, to take a less extreme example, money wages in the United States rose sharply, but the increase in prices wiped out virtually all of the increase. In 1917, the relative hourly earnings in all manufacturing industries exceeded the 1914 level by 27 per cent and the 1890-99 level by 79 per cent. Real earnings, however, were only 99 per cent of the 1914 level and 101 per cent of the 1890-99 level. For the following year, 1918, money earnings stood at 156 per cent and 221 per cent of the 1914 and the 1890-99 levels, respectively; real earnings were only 102 and 104 per cent, respectively.²

² Paul H. Douglas, *Real Wages in the United States, 1890-1926*. Houghton Mifflin Company. Boston. 1930. P. 108.

Wages and prices. Some idea of the importance of price changes (cost of living) for the study of wages is indicated in Chart 2 and Table 11. It is well known that there often is a considerable time lag between wages and prices; that is, that prices rise faster and fall faster than wages. From this it has been argued that labor is better off during a period of falling prices because its purchasing power is greater. But prices fall during periods of recession, which are also periods of unemployment, and it is only the worker retaining his job who may have a temporary advantage, pending the readjustment of his wages to the decline in prices. It is cold comfort to the unemployed man, however, to know that if he still had his job he would be better off than in the preceding period of prosperity.

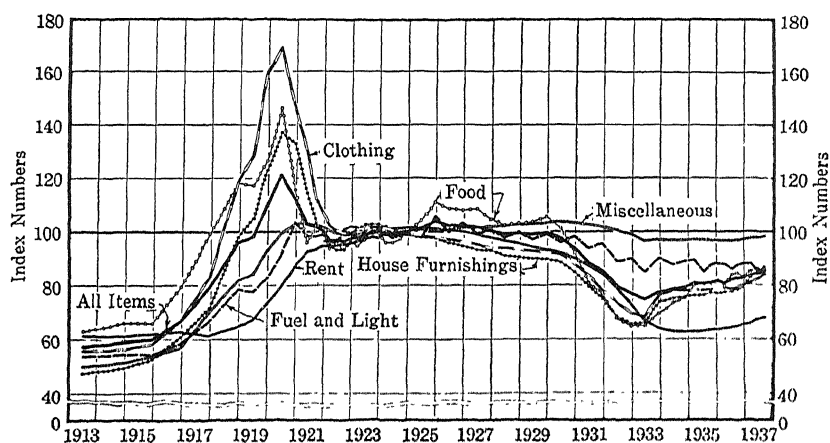


CHART 2.—Cost of Goods Purchased by Wage Earners and Lower-Salaried Workers

Average of 32 Large Cities of the United States, 1923-25 = 100

Money wages as an index of earnings are also inaccurate where employees receive part of their compensation in goods and services. Thus waitresses may receive part of their pay in the form of lunches and dinners; clergymen and some types of government employees may receive a house and food as part of their pay. Extreme examples of such methods of payment are to be found in company towns where workers are compelled to make their purchases at the commissary run by the company at a profit. The workers buy goods on credit, and their debt to the store is deducted from their pay. Hence they often receive, when the time for wage payment arrives, what has been called a "bobtailed check"—a statement of what they still owe the company. Though wages in such instances are calculated on a money basis, the necessity for making purchases at the

company store in effect alters the entire picture, especially because prices in company stores are often exorbitant.

Payment of money wages in scrip or company I.O.U.'s, formerly common in coal communities, gives an even more distorted picture of earn-

TABLE 11

INDEXES OF COST OF GOODS PURCHASED BY WAGE EARNERS AND LOWER-SALARIED WORKERS IN 32 LARGE CITIES COMBINED, 1913 THROUGH JUNE 15, 1939

(Average 1923-25 = 100)

Date	All Items	Food*	Clothing	Rent	Fuel and Light	House-furnishing Goods	Miscellaneous
1913—Average....	57.4	63.1	55.7	61.4	53.9	47.7	50.1
1914—December...	58.9	66.3	56.3	61.4	54.5	49.6	51.6
1915—December...	60.1	66.3	58.3	62.3	54.5	52.8	53.9
1916—December...	66.9	79.5	66.9	62.8	58.5	61.0	56.8
1917—December...	79.4	99.1	83.1	61.5	66.9	71.8	70.4
1918—December...	95.8	118.2	118.9	64.7	78.7	97.8	81.9
1919—June.....	98.2	117.3	128.8	67.3	77.8	104.0	84.3
1920—June.....	121.2	146.1	168.6	79.4	91.3	137.0	99.2
1921—May.....	102.8	95.8	129.8	92.7	98.4	114.3	103.2
1922—June.....	97.0	95.6	100.4	95.0	95.9	93.2	99.5
1923—June.....	98.6	97.2	101.1	97.3	98.7	102.8	99.1
1924—June.....	98.9	96.0	100.6	101.3	97.6	99.4	99.8
1925—June.....	101.4	104.2	98.5	101.4	97.9	97.9	100.8
1926—June.....	102.5	108.9	97.1	100.4	100.0	95.8	101.0
1927—June.....	101.9	108.7	95.3	99.0	99.4	93.4	101.7
1928—June.....	99.2	102.5	93.8	96.5	97.7	91.1	102.1
1929—June.....	99.1	103.7	92.8	94.3	97.0	90.2	103.0
1930—June.....	97.7	101.2	91.5	92.0	95.9	88.8	103.7
1931—June.....	88.3	80.6	83.4	87.3	93.7	79.3	102.8
1932—June.....	79.7	67.6	73.5	78.5	88.8	68.4	100.4
1933—June.....	74.5	64.9	68.4	66.8	84.9	65.8	96.4
1934—June.....	78.4	73.4	77.9	62.7	87.7	75.0	96.6
1935—Mar. 15....	80.6	79.8	78.0	62.6	89.3	76.0	96.8
1936—Apr. 15....	80.6	79.4	78.6	63.7	88.0	77.3	96.5
1937—Mar. 15....	83.8	85.4	80.9	65.9	88.1	83.1	97.3
1938—Mar. 15....	83.0	78.6	82.8	69.4	88.0	85.4	98.5
1939—Mar. 15....	82.0	76.4	81.1	69.6	88.4	83.2	98.5
June 15.....	81.7	76.3	80.9	69.5	85.4	83.2	98.5

* Covers 51 cities since June, 1920.

Source: *Monthly Labor Review* (Nov. 1939). P. 1158.

ings. Typically, such scrip could be used only at the company store. But even in cases where such a limitation did not apply, the wages were really not what they seemed to be, for merchants would accept such scrip only at a substantial discount. During the worst years of the depression, in the early 1930's, various communities paid their teachers and other employees in scrip.

Local merchants were generally willing to accept such I.O.U.'s in payment for merchandise, but at a discount of about 10 per cent.

Calculation in money terms is, however, so ingrained that, except for periods of sharp price rises, workers are more concerned about money wages than they are about real wages. They are producer- rather than consumer-minded, and the size of the pay envelope rather than its purchasing power impresses them.

THE TREND OF REAL WAGES

Undoubtedly the most careful study of real wages in the United States is that made by Professor Paul H. Douglas for the period 1890-1926, cited above. According to this study there was relatively little change in real full-time weekly earnings until after the World War; real average earnings did not change much until the war period as indicated in Tables 12 and 13.

TABLE 12
TREND OF REAL FULL-TIME WEEKLY EARNINGS IN ALL INDUSTRIES
(1890-1899 = 100)

Year	Real Full-Time Weekly Earnings (Weights = Number Employed in 1890)	Real Full-Time Weekly Earnings (Weights = Number Employed Each Year)	Year	Real Full-Time Weekly Earnings (Weights = Number Employed in 1890)	Real Full-Time Weekly Earnings (Weights = Number Employed Each Year)
1890	97	98	1909	103	103
1891	99	100	1910	100	99
1892	100	100	1911	98	98
1893	101	102	1912	100	100
1894	102	102	1913	100	100
1895	101	101	1914	99	100
1896	100	100	1915	102	104
1897	99	98	1916	102	104
1898	100	99	1917	96	98
1899	100	99	1918	97	100
1900	99	98	1919	97	101
1901	99	98	1920	99	103
1902	99	98	1921	106	109
1903	98	97	1922	110	114
1904	100	99	1923	116	121
1905	102	101	1924	118	123
1906	102	101	1925	118	124
1907	100	99	1926	119	125
1908	103	102			

Source: Douglas, *op. cit.*, pp. 210-211.

The increase in real wages between 1890 and 1926 indicated in the tables does not measure accurately the improvement in the status of American workers, for a large portion of the increase was caused by the shift of occu-

pations with more workers tending to enter the higher-paid than the lower-paid jobs.

TABLE 13
REAL AVERAGE ANNUAL EARNINGS OF WAGE EARNERS IN ALL INDUSTRIES
(1890-1899 = 100)

Year	Weights = Number Employed in 1890, Including Farm Labor	Weights = Number Employed in Each Year, Including Farm Labor	Year	Weights = Number Employed in 1890, Including Farm Labor	Weights = Number Employed in Each Year, Including Farm Labor
1890	98	100	1909	104	106
1891	101	102	1910	103	106
1892	102	104	1911	100	103
1893	101	102	1912	101	105
1894	98	98	1913	102	107
1895	102	101	1914	102	107
1896	99	98	1915	104	110
1897	99	97	1916	106	113
1898	100	98	1917	103	110
1899	101	99	1918	106	113
1900	99	98	1919	107	115
1901	100	100	1920	108	116
1902	100	100	1921	110	118
1903	99	100	1922	115	124
1904	100	101	1923	121	131
1905	103	104	1924	121	131
1906	101	103	1925	121	132
1907	100	102	1926	123	135
1908	99	101			

Source: Douglas, *op. cit.*, Tables 146 and 147.

TABLE 14
RELATIVE GAINS IN REAL EARNINGS OF DIFFERENT GROUPS IN INDUSTRY
(1890-1899 = 100)

Group	1890	1926
Wage earners, manufacturing	101	129
Wage earners, public utilities including railroads	98	117
Coal miners	115	152
Salaried and clerical, manufacturing and transportation	88	103
Government employees, other than postal	100*	70
Postal employees	92	96
Teachers	87	186
Ministers	99	98
Unskilled labor	97	121
Farm laborers	99	108
Building trades workers	97	138

*1892.

Source: Harry A. Millis and Royal E. Montgomery, *Labor's Progress and Problems*. McGraw-Hill Book Company. New York. 1938. P. 102. Based on data and tables in Douglas, *op. cit.* Data refer to annual earnings except for the last three groups.

Not all groups participated to the same extent in the advance; government employees, for example, suffered a decline in real earnings between 1890 and 1926 while teachers made a considerable gain. Table 14 shows the position of the various groups in 1890 and 1926.

After 1926, real wages continued their upward trend, rising approximately 5 per cent between 1926 and 1928. With the depression, however, and the unprecedented unemployment which followed 1929, the concept of real wages as a measure of labor welfare lost most of its significance. Workers who retained their jobs were somewhat better off because of the more rapidly declining price level; but when the number of the unemployed climbed to more than ten million and the number of those on part-time amounted to millions more, little importance could be attached to real hourly wages. Available data on weekly earnings indicate that manufacturing wage earners suffered a decline of 13.7 per cent in real earnings between 1929 and 1933; other groups which suffered losses were wage earners engaged in bituminous coal (32 per cent decline), in metalliferous mining (15.4 per cent), in quarrying and nonmetallic mining (26.2 per cent), in cleaning and dyeing 10.8 per cent. Employees of public utilities and railroads and those engaged in the wholesale trades had their real incomes increased between 1929 and 1933. Employees of electric light and power companies and employees of electric railway companies lost 18.0 per cent and 15.8 per cent respectively in *nominal* wages; the greater price decline, however, brought them respective *real* wage increases of 13.4 per cent and 16.4 per cent.³

Since the New Deal came into power, real wages for workers engaged in practically all industries have resumed their upward trend, for higher prices have only partially offset the much higher wage scales. In addition

TABLE 15
REAL WEEKLY EARNINGS IN MANUFACTURING INDUSTRIES
(1923-25 = 100)

Year	Index Number	Year	Index Number
1920	94.1	1929	104.7
1921	89.0	1930	99.8
1922	92.1	1931	98.0
1923	100.1	1932	88.2
1924	100.4	1933	90.1
1925	99.5	1934	95.8
1926	99.9	1935	100.6
1927	102.3	1936	107.2
1928	104.3	1937	114.4

Source: *Statistical Abstract*, 1938. P. 322.

³ Millis and Montgomery, *op. cit.*, p. 120.

to this it should be pointed out that labor as a whole has benefited less from higher real wages than it has from the re-employment of millions who, at the worst stages of the depression, were without jobs. The extent of the improvement of real wages in manufacturing industries can be seen from the figures, given in Table 15, of the Bureau of Labor Statistics.

THE WAGE STRUCTURE IN THE UNITED STATES

What have these fluctuations in real wages meant in dollars and cents? How much did the worker earn in a year of great prosperity? How much does he earn now? In Table 16 figures are given for average nominal weekly

TABLE 16
NOMINAL WEEKLY EARNINGS, 1929 AND 1933

INDUSTRY AND CLASS OF LABOR	AVERAGE NOMINAL WEEKLY EARNINGS	
	1929	1933
Manufacturing (wage earners only)	\$25.30	\$15.79
Mining (wage earners only)		
Anthracite coal	31.26	24.26
Bituminous coal	25.05	12.32
Metalliferous	30.19	18.46
Quarrying and nonmetallic	23.67	12.62
Crude petroleum	36.37	26.52
Trade		
Retail	22.67	16.22
Wholesale	36.06	27.13
Public utilities		
Telephone and telegraph	25.37	23.88
Electric light and power	30.02	24.62
Electric railways	33.02	27.80
Steam railroads		
Wage earners	32.01	25.54
Salaried workers	43.92	36.97
Service		
Laundry	18.87	13.75
Cleaning and dyeing	24.69	15.93
Hotel	16.97	12.10

Source: Leverett S. Lyon and Others, *The National Recovery Administration*. The Brookings Institution. Washington, D. C., 1935. P. 778.

earnings in various industrial groups for 1929 and 1933. It will be seen that, with the exception of salaried workers on steam railroads, the average for the workers in all the other groups would not yield an annual wage of \$2,000, and in the case of laundry workers would fall below \$1,000. The years of

depression which followed brought reductions in the wages of all the groups, the percentage decline ranging from 5.9 per cent in the case of telephone and telegraph employees to 50.8 per cent in the case of bituminous coal miners. In 1933, then, half of the groups showed annual earnings of under \$1,000 (on the basis of the average weekly earnings), with the annual earnings of manufacturing wage earners barely exceeding \$800.

By 1937, however, average weekly earnings had gone up considerably as can be seen from Table 17. For all manufacturing industries, the average

TABLE 17

AVERAGE WEEKLY EARNINGS FOR SELECTED MANUFACTURING INDUSTRIES IN 1937

INDUSTRY	AVERAGE WEEKLY EARNINGS*
Blast furnaces, steel works, etc.	\$31.64
Cast-iron pipe	21.17
Hardware	24.69
Steam and hot-water heating apparatus	27.08
Agricultural implements	28.30
Electrical machinery	28.05
Foundry and machine-shop products	28.51
Machine tools	32.24
Radios and phonographs	21.26
Textile machinery and parts	27.52
Aircraft	27.91
Automobiles	31.94
Shipbuilding	30.51
Smelting and refining	27.91
Lumber-sawmills	20.72
Glass	24.97
Cotton goods	14.97
Silk and rayon goods	16.16
Woolen and worsted goods	19.99
Clothing, men's	18.98
Beverages	33.05
Canning and preserving	16.76
Slaughtering and meat packing	27.27
Cigars and cigarettes	16.32
Printing and publishing—book and job	30.05
Printing—newspapers and periodicals	36.85
Petroleum refining	33.72

* Data do not represent average full-time earnings since both full- and part-time workers are covered.

Source: *Statistical Abstract*, 1938. Pp. 320-21.

weekly earnings for 1937 were \$25.14, which compares with \$17.57 for 1933 (the Bureau of Labor Statistics data varying slightly from the sources for the data in Table 16), \$19.14 for 1934, \$21.06 in 1935, and \$22.82 in 1936.

A much better picture of the position of American workers in terms of wages can be drawn from the recent estimates of consumer income in the United States for 1935-36, even though they are estimates for families and single individuals, not for workers as such, and include income from all

sources. Of the 39,458,300 families and single individuals covered by the estimates, 89.32 per cent had an income of under \$2,500 for the year; 81.82 per cent had an income of less than \$2,000; 68.68 per cent, an income of less than \$1,500; 46.54 per cent, an income of under \$1,000, while 17.01 per cent had an income of less than \$500.⁴ In other words, over a sixth of the total had incomes of less than \$10 a week, nearly half had less than \$20 a week, and nearly 70 per cent had less than \$30 a week.

The substantial differences between the earnings of workers indicated in the preceding tables are confirmed by our general observation. Variations in wages and salaries are one of the most constant characteristics of the wage structure. What factors may account for them?

In the first place, it may be said that the occupation will have an important influence on the wage. The degree of skill or training required, the demands of the job on the physical and nervous energy of the worker, and, to a considerable extent, our traditional ways of looking at things are all factors to be considered. We feel, for instance, that skilled workers ought to be paid more than unskilled, that workers who have spent years in apprenticeship ought to be rewarded. Basically, such attitudes are probably the outgrowth of the fact that the skilled worker is in a better bargaining position than the unskilled because it is more difficult to replace him. It is the bargaining power rather than the skill which is determining in the majority of instances. Thus, to take an extreme case, if there had been fifty baseball players identical in skill and "color" with Babe Ruth, it is hardly likely that all would have commanded the same salary.

Second, there are important variations in wages between industries. It will be noted from Table 18 that average earnings for 1936 in agriculture

TABLE 18
AVERAGE EARNINGS FOR 1936 BY INDUSTRY

Agriculture.....	\$ 525
Service.....	933
Construction.....	1,234
Miscellaneous.....	1,245
Manufacturing.....	1,276
Trade.....	1,304
Mining.....	1,321
Electric light and power and gas.....	1,380
Government, excluding work relief wages.....	1,419
Communication.....	1,451
Transportation.....	1,551
Finance.....	1,667

Source: Maurice Leven, *The Income Structure of the United States*. The Brookings Institution. Washington, D. C., 1938. P. 37. Data from Robert R. Nathan, *National Income, 1929-36*. Department of Commerce.

⁴ *Consumer Incomes in the United States*. Government Printing Office. Washington, D. C. 1938. P. 6.

were less than one-third those in finance. This is caused in part by the different occupations involved. In part, too, it is probably affected by the relative prosperity or depression of the industry. Agriculture has been chronically depressed; so, too, has been the textile industry. There are various industries, termed "parasitic industries" whose failure to pay the workers a "living wage" is explained by the depressed state of the industry.

Third, the same workers in the same industries but in different parts of the country are likely to receive different amounts in wages. Wages in the largest cities tend to be higher than those in medium-sized cities which will, in turn, tend to exceed wages in rural areas. Wages in the South are lower than those in any other part of the country.

A fourth factor is age, which applies both to the young and the old. Both child labor and the problem of the older worker are discussed elsewhere in this book; it is sufficient here to observe that both groups are generally paid less than are workers between the ages, say, of twenty and forty. Among the causes for this situation may be mentioned the type of work done, the ability and strength of the workers concerned, and their bargaining power.

The sex of the worker may also affect the wages paid. It is much less true today than formerly that women are paid less than men for the same work, though there are still many instances where this holds. Men's wages tend to be higher than women's wages more because of the work done than for any other reason.

Sixth, mention should be made of color, which applies especially to the Negro. The Negro, as we shall see in Chapter VII, typically receives much lower wages than do his white co-workers. Again, this is likely to result less from rank discrimination among workers doing the same work than from the fact that the Negro seldom receives an opportunity to enter the better-paid jobs.

Finally, the existence and strength of labor organization may have an important effect on wages. Chart 3 gives a picture of union and nonunion wages in building construction. In varying degree, unions in other industries have also been successful in increasing the wages of their members to a level above the wages of nonunion workers.

THE DETERMINATION OF WAGES

We discussed in the preceding section the differences in wages among workers and we turn now to the consideration of the factors which operate to fix wages in general. Economists have long pondered the question and many theories have been advanced on the subject. Among the earliest of

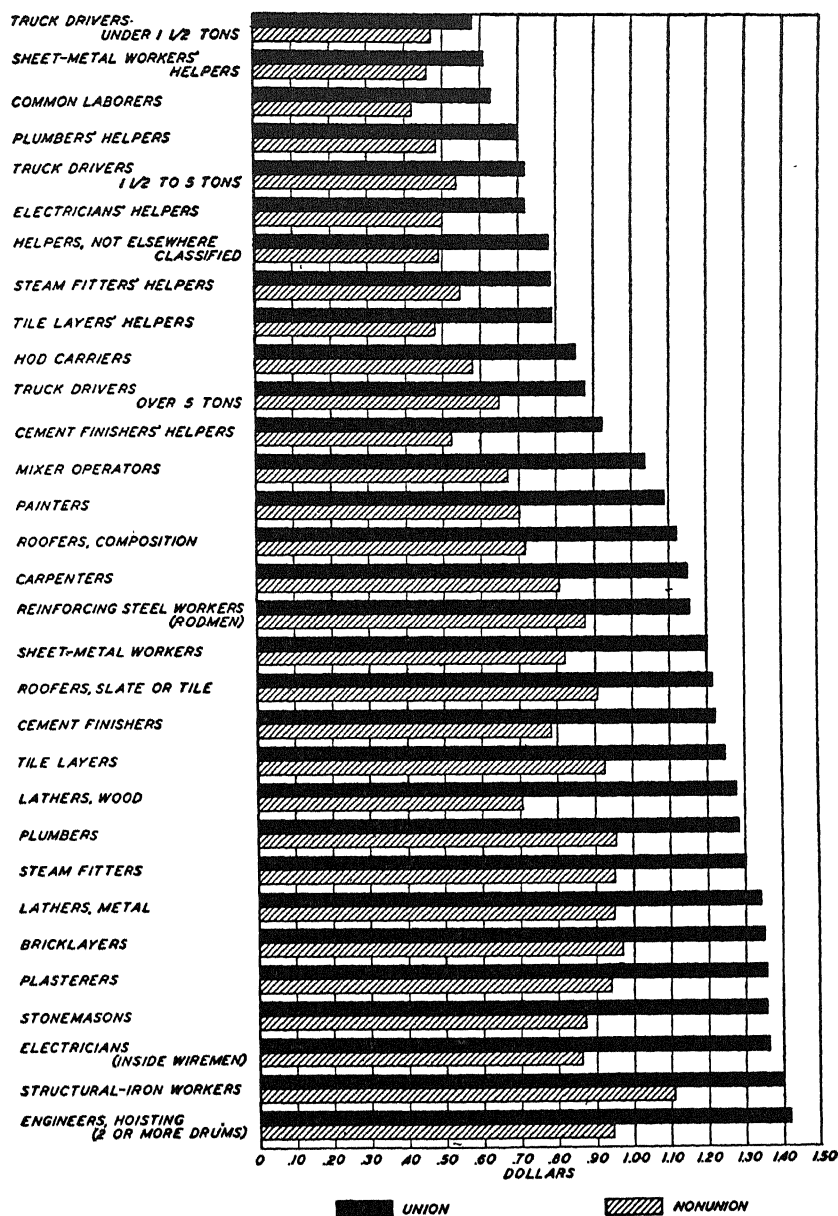


CHART 3.—Union and Nonunion Wages

Average hourly earnings in selected occupations in building construction, 1936

Source: Leven, *op. cit.*, p. 77. Chart is based on data in *Monthly Labor Review*, August 1937, p. 284.

these was the *subsistence theory* of wages. In its most extreme form, called by Ferdinand Lassalle the *iron law of wages*, this theory held that the wages of labor would tend to be fixed at that level which would barely permit workers to purchase the minimum necessities for survival. Underlying this were the various beliefs involved in the Malthusian theory of population. If wages should be increased, the population would also be increased, since population always tended to press upon the food supply. This meant that there would be an increase in the labor supply which would bring wages back to the subsistence level.

A much sounder statement of the subsistence theory, one held by Ricardo in his chapter on wages and stated somewhat differently by Marx, was that while wages tended to be fixed at the subsistence level, the content of that level (that is, the specific items of food, clothing, shelter, and so on) would vary with the particular type of society and that it would be much higher in some than in others as the standards of some societies were higher than the standards of other societies.

Another of the early wage theories was the *wages-fund* doctrine. According to this theory, at any time employers have a certain definite amount which they can use for the payment of labor. Wages were thus determined by the proportion of the wages-fund to the total labor supply; the more workers, the lower the average wage. If the wages-fund was increased, the amount going to labor would also be increased, but since this would result (according to the Malthusian doctrine) in an increase in population, the gain would only be temporary. Labor could improve its condition only by restricting population. It should be noted that the wages-fund doctrine left no room for trade-unions since any gains to one sector of labor could only be at the expense of the rest.

In recent years, the most popular wage theory has been the *marginal productivity* theory. Employers, it is said, will continue to add labor to a given quantity of capital until the cost of the added units of labor will be equal to their productivity. This is based on the principle of diminishing returns: that is, if we keep one factor of production—capital—constant, and increase the other—labor—there will be a greater total but a smaller proportionate return. Thus, each of ten identical units of labor will produce more proportionately with a given amount of capital than will each of twenty identical units with the same amount of capital. Each additional unit will bring about a reduction in the *average* productivity, though, since all the units of labor are presumed to be identical, the last one will produce as much as the first. The “dosing” process (the addition of labor units) will continue until, as we said above, the cost of an additional unit of labor will equal the amount produced. But since all units of labor are identical, the wages of each

will be equal to the wages of the last (i.e., the *marginal*) unit taken on. Stated more generally, the marginal productivity theory argued that each unit of labor will get what it produces.⁵

The most realistic wage theory is the *bargain theory*, which holds that wages tend to be determined by the market bargain between the economic position of the employer and the industry on one side and the bargaining power of labor on the other. That there are limits to what the employer can pay is clear. Among such limits are those imposed by the profitability of his business and the tactics of his competitors; an increase in wages may mean that the employer will lose his customers because prices will be too high. That there are limits to what workers will accept is less clear; the traditional argument has been, of course, that subsistence will form a rock-bottom minimum, but this overlooks the existence of parasitic industries which have constantly paid less than a subsistence wage, the assumption being that the worker's income will be supplemented from some other source such as earnings by some other member of the family. For instance, the low wages of women in many industries were justified on the ground that the women were only working for "pin money" and were deriving their major support from husband or father. Incidentally, this argument is still made although it has been abundantly demonstrated to be based on fancy rather than on fact. The notion of a subsistence minimum also does not take into account the increasing number of free or practically free services offered to the poor by the government, such as hospitals and free milk stations, or by private philanthropy.

Trade-unions have their economic justification in the bargain theory of wages. The combination into one organization of all the workers in a given trade or industry gives that organization enormous leverage in its bargaining with the employer. In this respect, of course, the trade-union resembles any other economic group which has succeeded in "cornering" the market and is in a position to exert monopoly power.

But can unions succeed in raising the general level of wages: that is, raise the real earnings of all workers? To some extent, unions can probably reduce employers' profit margins, and thus make an additional sum available for wages. Of course, a change in the economic system which would eliminate profits altogether might be a further step in the direction of a larger total

⁵ Space does not permit an extended analysis or critique of classical and neoclassical wage theory nor would such analysis be of any great value to the usual student of labor problems in a dynamic society. The fundamental assumptions of traditional wage theory hold only partly in our economic system, and a consideration of the validity of the assumptions as well as the soundness of the logic may well be left to more advanced students. Cf., for example, the discussion of the productivity theory, in which some critics held that it involved circular reasoning and that it really came down to saying that labor gets what it produces because it produces what it gets.

sum available for wages. Short of cutting into profit margins, however, the chief power which unions can exert over wages generally is to help to increase the total volume of production, and then see that the workers get their share.

WAGES AND THE STANDARD OF LIVING

During the prosperous 1920's we frequently boasted of the very high American standard of living—which we never carefully defined—and we had great hopes for the future. Even after the depression had got well under way, we still consoled ourselves with the thought that our people were much better off economically than those in other countries. What we failed so frequently to realize was that the measure of superior conditions does not lie in the higher money wage paid in one country or even in the "chicken in every pot and two cars in every garage" which its citizens are supposed to enjoy while some other country has neither. It lies rather in the aspirations of people and the extent to which these aspirations are attained; these in turn depend upon the cultural level of the people.

In Japan the people live largely on fish and rice, whereas in the United States they live on meat and bread. In Japan the people sit on the floor, eat on the floor, study on the floor, and sleep on the floor. The partitions in the houses are made of paper. This means that the standard of living in Japan costs far less than the standard of living in the United States. There is a cumulative saving in costs stretching over food, clothing, and shelter and having a cumulative effect in lessening prices on almost all products. This illustrates obviously that standards of living vary with the cultural development and with the habits of a people. Similarly within the United States there are different standards of living between different geographical sections and between different classes.

We usually count the average workingman's family as including five persons, three of whom are children. What is a fair wage for such a group? The answer depends on the standard of living. What it is and what it should be for the average working-class family is a critical question in the study of labor problems.

Charles Booth, the first to attempt to estimate the standard of living of the working class of London in the 1880's, found that nearly one-third of the population was living in desperate want. In 1899, Rowntree, making a similar study of the city of York, divided all those living in poverty into two groups: (1) those whose earnings did not provide enough for physical well-being; (2) those whose total earnings would be enough to provide physical efficiency if it were not that they were being partially spent for some other purpose. Rowntree said that those in the first group were in *primary poverty*, and those in the second in *secondary poverty*. His standards

for both groups were so strict that he did not allow for railway or omnibus fare or even for a newspaper. The families were not supposed to spend anything for postage or for entertainment or for contributions to the church. The children had no allowances for toys or candy, and the father was not allowed anything for drinking or smoking. No provision was made for illness, and it was assumed that the wage earner toiled every single day throughout the year. With these standards, Rowntree discovered that over 15 per cent of the working class of York were in *primary* poverty. This approximated 9.9 per cent of the total city population. He found 33.6 per cent of the workers and 21.5 per cent of the total population of York in *secondary* poverty. Rowntree also found that a worker ordinarily passed through five different stages of want and plenty during his lifetime. He is quite likely to be in poverty while a child. When he begins to earn, and as long as he is unmarried, he is apt to have relative plenty. This period may last through the first year of married life, until the children begin to come. He is then likely to fall into the poverty group again, which continues until the children themselves grow up and start to earn, whereupon he once more reaches the level of comparative plenty. The more children he has, the longer this period is likely to last. As the children marry and leave home, the family again falls into poverty. Rowntree found that women were likely to be in a state of poverty while they were having children and rearing them.

In 1900 the United States Bureau of Labor conducted some investigations into the living standards of 25,000 families in the United States. Of this number, the Bureau selected some 11,000 families whose expenditures it considered normal. The average income of this group was approximately \$650. Of this sum 5 per cent on the average was left as a surplus. The families used their income as follows: 43 per cent for food, 18 per cent for housing, 13 per cent for clothing, 6 per cent for heating and light, and 20 per cent for all other expenditures. Since the cost of living has risen since 1900, what could be purchased for \$650 was far different from what that sum could purchase now. Around 1905 Dr. R. C. Chapin made a study in New York of some 600 families and found that an income under \$800 was not sufficient to maintain a normal standard of living. Fuel was gathered from the street by over one-third of all the families receiving \$700. Only one in six of the \$700 group could spend anything for dental work. Recreation and education were reduced to the lowest terms. Half of those getting \$600 were forced to gather fuel from the street. Dr. Chapin was even uncertain whether an income of \$900 could be made to suffice. In 1910, J. C. Kennedy made a study in Chicago and estimated that a subsistence budget, which made no provision for tobacco, barber bills, recreation, the church, and so on, would require \$733.26.

During the World War, the National War Labor Board, with Pro-

fessor William F. Ogburn making the study, tried to determine a minimum standard-of-living budget. Taking the 1918 price level, his minimum standard came to \$1,400 and his comfort standard to \$1,760. Since the price level had increased about 75 per cent from 1913 to 1918, the standard prepared by Dr. Chapin would cost about \$1,400 in 1918. Ogburn's minimum standard budget might be called the minimum of subsistence level where the income is just sufficient for physical and material upkeep, but insufficient for emergencies or for recreational expenditures. The minimum health and decency level is above this and would include perhaps \$35 for health, \$20 for recreation, \$14 for education, and \$35 for incidentals annually.

Above this standard comes the "comfort" level. Ogburn estimated that this would cost \$1,506 in Seattle in 1917, and \$1,760 in the Eastern centers in 1918. According to the United States Bureau of Labor Statistics, in August, 1919, it would cost \$2,262. In certain mining towns in January, 1920, Ogburn found that it would cost \$2,244, while in Chicago in the same year the Council of Social Agencies found the minimum comfort budget would cost \$2,322. In 1927 and 1928 the cost of living in ten cities,⁶ according to the government's budget, ranged from roughly \$2,050 in Schenectady, New York, to \$2,500 in San Francisco. This means a weekly wage of from \$40 to \$49. Yet the average yearly wage of all the workers in manufacturing for 1927 was only \$1,300.⁷

EFFECTS OF LOW WAGES

When we consider average wages, we must remember that many workers receive far less. A state survey of 270 establishments in Florida indicated that 43 per cent of all the women in manufacturing in the state were receiving less than 20 cents an hour.⁸ A study in Texas in 1936 revealed wages of \$2.00 a week. Wages of less than 14 cents an hour were reported in the pecan factories, in the manufacture of cloth bags, men's cotton garments, and infants' wear.⁹

Any number of scientific studies have shown the serious physical effects of low wages. The United States Children's Bureau, after tabulating 21,500 live-born infants in 7 cities, found that the lower the income of the father, the higher the infant mortality. When the father had no income there was an infant mortality rate of 210.9; when the father's income was under \$450 the infant mortality rate was 166.9; and when the father had an income of over \$1,250 the rate dropped to 59.1.

⁶ See *Facts for Workers*, The Labor Bureau. Labor Bureau, Inc. New York. February, 1928.

⁷ *Census of Manufactures, 1927*.

⁸ *Wages and Hours in Florida Industries*. Bulletin. U. S. Women's Bureau, Washington, D. C. 1938.

⁹ *Women in Texas Industries*. Bulletin 126. U. S. Women's Bureau. Washington, D. C. 1936.

Other studies have shown that children of the poor have a death rate ranging from two to seven times that of children who are comfortably situated. It is also true that the comfortably situated live longer than those who are poor. The French economist, Charles Gide, has stated that the average life span in France is three times as long for the wealthy group as it is for the poor.

Low wages also mean poor housing, inadequate nutrition, lack of schooling, sometimes the breakup of the home—in short, a thousand and one injurious consequences. It has been shown that mental disturbances are often caused by worry due to inadequate income. Low wages place a terrific burden on society as a whole. They not only decrease purchasing power and so affect nearly every business, but people as a whole have to carry the heavy burden of the dependents, the defectives, and the delinquents which they produce.

EFFORTS TO MEET THE PROBLEM

As we shall note in Book III, the desire to raise wages has been one of the chief reasons for the organization of trade-unions. Few union activities can be more important to the members for it is scarcely possible for a union to survive unless it can secure wage gains for its members. The methods which unions use and the difficulties they encounter will be discussed in Book III. Here it is sufficient to point out that American labor has never been willing to set fixed wage goals. Unions demand a "living wage" and insist on "a fair day's pay for a fair day's work," but it would be a mistake to assume that any permanent content can be given to such terms or even that they would bring the same result for all workers at the same time. In a dynamic society which is characterized by ever-growing wants and which imposes no rigid legal limitations on the right of people to satisfy as large a proportion of these wants as possible, it is inevitable that a "living wage" means different things at different times. At any particular moment of time, a union's demand for a "living wage" is likely to be translated into a demand for a little more than the members are getting. If this is obtained, further wage demands will be in order at a later time.

Employers, too, are aware of the role of wages in the worker's life, and a large part of the discussion in Book IV will deal with the efforts of employers in part to meet and in part to fight off the wage demands of their employees.

Government enters the wage picture directly through the attempts of minimum wage laws to set a "floor" to assure the lowest-paid workers that they will receive at least a minimum amount in wages; indirectly, government is involved in wages through its activities in regulating the conditions

of industrial warfare, the organization of labor, and the establishment of mediation and arbitration agencies. These will be discussed fully in Book V.

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QUESTIONS

1. What is meant by real wages? Subsistence budget? Minimum comfort budget?
2. What is the trend of real wages?
3. What accounts for the variation in wages?
4. What are the various theories of the determination of wages? Which do you think is the most accurate explanation? Why?
5. What are some of the effects of low wages?
6. What are the lowest wages paid to manufacturing workers in your state? Who pays them and why?
7. Get in touch with your state department of labor and find out what are the best and worst industrial conditions in the state.

It is impossible to deal with the question of wages apart from that of the hours of work. The two are as inseparable as Siamese twins. Basically, the employer-employee relation resolves itself into the question, "How much for how long?"—how much pay for how many hours of work? This is generally true even where the pay is calculated by the piece rather than by the hour, for a piece rate means almost nothing without some idea of how many units can be produced within a given time. Put somewhat differently, this means that the worker's daily, weekly, monthly, or yearly income is the product of the wage rate and the time worked. Both the rate and the time are vital factors in the final result. Hence if the employer can prolong the working week for the same *total* wages, he gains just as definitely as if he had succeeded in cutting wages for the same working week. Conversely, the workers gain by a cut in working hours as they do by an increase in wages. Ira Steward¹ expressed it in a famous couplet:

Whether you work by the piece or work by the day
Decreasing the hours increases the pay.

IMPORTANCE OF THE PROBLEM

The question of hours of work goes beyond the controversies it causes between labor and management. It involves more than the jockeying for

¹ See page 152.

economic advantage. Society itself is vitally interested and for excellent reasons.

There is, first of all, the matter of hours of work for women and children. Dissenting from the majority opinion in the *Adkins* case,² Chief Justice Taft said, "The Nineteenth Amendment did not change the physical strength or limitations of women . . .," and Justice Holmes observed, "It will need more than the Nineteenth Amendment to convince me that there are no differences between men and women. . . ." Both justices made their remarks apropos of the implication that the ratification of the Nineteenth Amendment, which gave suffrage to women, had placed men and women on a parity so that minimum wage legislation for women was unconstitutional as class legislation. Both based their comments on the existence of important physiological differences in the structure of men and women. A certain number of hours of work which might not harm men at all might be destructive to the physical well-being of women. Since it has long been believed that woman's physical strength and endurance are normally inferior to man's, limitation on the hours of work for the former is extremely important, especially because of her child-bearing function.

As far as children are concerned, there is also available a wealth of data relative to the harmful effects of long working hours on health, not to speak of schooling, play, and morals.

Even in occupations where men only are employed, the relation of long working hours to health is a matter of vital concern. Deep-sea diving and working in mines and smelters and as sand hogs in tunnels and caissons, among many other occupations, involve considerable strain on the bodily organism, and prolonged exposure may lead to disastrous results. Long working hours are dangerous to health in dusty trades, where the atmosphere is very humid, and where temperatures are very high.

Modern industry is also likely to cause serious nervous strain unless the working day is short. In highly repetitive occupations where the machines are run at a very fast pace, the resulting nervous tension may be more serious than the physical exhaustion.

Quite apart from industries where the work is performed under great air pressure, or in the presence of noxious gases and fumes, or dust, or extreme heat, or at a very rapid pace, it is true that long working days at *any* occupation are not conducive to health. The body simply does not get a chance to relax and recuperate in the few hours between the end of one working day and the beginning of another, particularly where the seven-day working week exists.

Many more accidents occur when men are tired than at other times, for the body's reaction time is perceptibly slowed down. Not only is the worker

² 261 U. S. 525 (1923).

himself much more likely to be hurt if he is tired, but he is also more likely to hurt others. Quite commonly we find in the newspapers accounts of an automobile accident which occurred because the driver had fallen asleep at the wheel. Train collisions and bus and truck accidents may happen because the engineers or drivers have worked for twelve or fourteen hours without rest.

Recently, reduction of the hours of work has assumed importance in connection with unemployment. New Deal laws, such as the National Industrial Recovery Act and the Fair Labor Standards Act, are based in part on the conviction that unemployment would be materially decreased if the working week were sufficiently shortened.

Hours of work are also related to the functioning of a democratic society. A democracy, it is urged, cannot function properly unless its constituents have the opportunity to be informed, and become intelligent and active participating citizens. If workers spend so many hours at the job that little time is left except for eating and sleeping, this situation cannot be realized. Similarly, workers will not be able to improve their minds or their economic position by attending evening schools if the job consumes all their energy and vitality.

Finally, there is the humanitarian aspect of the problem. Is it socially desirable for people to spend so many hours at work that they have no leisure for themselves and their families? Can an industrial society do no better than to require a man to exchange substantially all his waking time for bread, and leave him no time for living?

The worker's attitude. The arguments for the shorter working day which we have just discussed may be desirable from the viewpoint of general welfare if they cause a diminution in the volume of accidents and unemployment, safeguard the worker's health, and contribute to the creation of a stronger democratic society. What is the worker's point of view? All the foregoing factors probably operate, though in varying degree, on the American worker; chief among them are probably the desire to avoid fatigue, secure leisure, and protect the job. Yet it would appear that the persistence of the drive toward the shorter working day may have its roots in something deeper—the wage system itself. We often observe that workers' objections to a long working day disappear magically if they are well paid for the overtime. Indeed, in a number of industries trade-union leaders have a hard time discouraging overtime work, for only a relatively few of the more sophisticated workers grasp the trade-union philosophy of the relation of the shorter day to unemployment. And we are familiar with the fact that the small independent entrepreneur may work fourteen, sixteen, possibly even more hours a day in his own business. What is the answer? Mainly, it lies

in the fact that the worker views the job as essentially a market transaction—a bargain between himself and the employer where it is to each one's interest to give as little as possible for as much as possible. The worker is acutely aware of the pressure the employer is able to exert in the matter of wages, and he feels that he ought not to give more than a certain amount of work for the wages he receives. Such an attitude, like other social attitudes, tends to become a habitual mode of behavior, so that workers will often strive for a reduction in hours without conscious recognition of the underlying causes. Moreover, the fact is that modern industry does not, for the most part, give workers tasks which they find interesting. Repetitive tasks may bore even the unimaginative worker; and too few employers have recognized the necessity of arousing in their employees an interest in the work. Again, shop discipline is irksome to many workers, and they try to escape from it as soon as possible. How distasteful many occupations are to those engaged in them may be seen in the almost ludicrous haste with which they quit their daily tasks when the whistle blows.

In any discussion of the question of hours several preliminary points must be made clear. First, to the hours of work which constitute the "normal" working day, we have to add the overtime work, if any. In numerous instances, overtime work occurs frequently, and, even though it may be paid for at better than the regular rate, such compensation does not insure that it may not be damaging. Second, we should add to the working time the time required for coming to and going from work. In many of our larger cities workers may live at such a distance from their place of work that it may take them an hour or more to travel between their homes and their jobs. An eight-hour day may thus be a ten- or an eleven-hour day. Moreover, if the men are required to be present for fifteen minutes or a half-hour before work begins, there is really an addition to the working day. Third, night work and work on Sundays and holidays raise certain special questions. Night work, for example, is said to be much more harmful to health than day work of the same number of hours. Work on Sundays and holidays means that the worker is busy when most people are free, and does not enjoy himself or get any benefit from his day off. Fourth, the seven-day week is particularly undesirable. It is much less wearing on a man to work ten hours on each of twenty-four days in a month than to work eight hours every day in the month, although the total working time is the same in both cases.

HISTORICAL DEVELOPMENT ³

In the course of the past century and a half there has been a drastic reduction in the number of hours of work per day and per week. This reduc-

³ See Book II for shorter-hour movement in the United States.

tion has not been steady nor has it proceeded uniformly in all occupations. In some industries the thirty- or forty-hour week seems to have become firmly established; in others, the fifty-, and even the sixty-hour week is still common. On the whole, however, great progress has been made in cutting down the hours of work. In a New England cotton mill a hundred years ago—

They started to work at five o'clock in the morning and worked until seven o'clock in the evening with a half-hour for breakfast and forty-five minutes off at noon for dinner. They spent fourteen hours a day at the factory. Bells rang at the break of day in some factory towns, the workers tumbled out of sleep, crept into their clothes and reported at the factory gates in fifteen minutes, when the gates were closed. . . . The gates were opened at eight o'clock to let the workers go. . . . The Hope factory in Rhode Island ran on this plan. In the Eagle Mill at Griswold, Connecticut, the work day lasted fifteen hours and ten minutes. At Paterson, New Jersey, women and children began the day's work at 4:30 in the morning. Overseers in some textile mills cracked the cowhide whips over women and children.⁴

There are at least six factors which affect the length of the working day in modern industry: (1) habit and custom, (2) public opinion, (3) the kind of employment, (4) the employer's economic strength, (5) the strength of labor, (6) legal regulations.

The working class started off with habit and custom, as well as public opinion in favor of a working day averaging at least twelve hours. Long working days are common, indeed necessary, in agriculture. As modern industry developed it naturally took over the agricultural hour schedule. The working day on a farm lasted as long as there was light. Dr. A. J. Todd tells us about a Western ranch where the management said that the men worked from "can to can't," meaning from the time it was light enough to permit them to see until it was so dark they could no longer see. Similarly, in the infancy of modern industry, the rule was "dawn to dusk," and where artificial illumination was available the working day would start well before dawn and last until late in the evening. There appeared to be no recognition of the fact that work in a factory was different from work on a farm, that it was one thing to work in the fields with fresh air and sunshine and quite another thing to work at high speed in a dust-filled factory tending automatic machinery.

Public opinion, in those early days, also defended long working hours on grounds of morality. It was bad and sinful for man to be idle, because an idle man got into mischief—he dissipated, he drank, he gambled. A society raised on Calvinist virtues of industry, sobriety, and thrift saw in a shorter working day only evil, corruption, and irreligion. And the employers

⁴ Carl Sandburg, *Abraham Lincoln, The Prairie Years*. Harcourt, Brace and Company. New York. 1926. I, pp. 125-26. Reprinted by permission of the publishers.

who profited handsomely by the long working day quite naturally took no steps which would cause the worker to fall a prey to the vices that accompanied leisure. With time, however, the disadvantages of the twelve-hour day become more and more evident, and public opinion turned increasingly in favor of the shorter day.

Some employments seem to require a long working day more than others. In canneries, for example, the risk of spoilage may necessitate a very long day during the season. It has often been argued that in the continuous-process industries, such as iron and steel, a long working day was made necessary by the "peculiar nature" of the industry.

Of the importance of the economic strength of employer and of worker little need be said at this point. Obviously, a strong employer is in a much better position to enforce a long day than a weak employer; witness the persistence of the twelve-hour day in steel. Conversely, where unions are strong, as in clothing, mining, and building, the short day is likely to be the rule.

Much has been accomplished by legislation, both state and federal. At first designed chiefly to benefit women and children, the laws later began to deal with work in hazardous occupations and, finally, in 1938, culminated in the passage of the Fair Labor Standards Act which fixed a ceiling for hours for all workers engaged in interstate commerce.

In a very real sense, the six factors listed above are not independent, but are interrelated. Habit and custom mold public opinion, but changing public opinion often results in changing habits. Both are undoubtedly influential in any action which the government may take. Legislation which, in its inception, may be at wide variance with the great body of public opinion may, if it is given adequate opportunity and sufficient time, so demonstrate its desirability as to change the trend of public thought on the matter. It is, moreover, impossible to dissociate the strength of organized employers or of organized labor from legislation. In a democratic state, the acts of government do not originate in the mind of a *Führer* who in theory (though the practice may be quite inconsistent with the theory) is presumed to think in terms of the interests of the whole people. Instead, legislative processes in a democratic state are affected by the attitudes of special groups or lobbies working in the interests of special groups. When labor is well organized and strong it is much more likely to secure concessions from a legislature than when it is weak, and the same is true, of course, of the employers.

Due to the operation of a complexity of causes over a period of a century or so, down to 1920, there was a gradual reduction in the hours of work. In 1840, the federal government established the ten-hour day for all government work. By 1845, the building trades had won the ten-hour day. In the factories generally the twelve-hour day was the rule up to the Civil War.

After that time, agitation for an eight-hour day began. The Knights of Labor in the 1880's struck powerful blows for the shorter day, and the American Federation of Labor continued the fight for shorter hours. Not long after the formation of the A.F.L., the carpenters and the bricklayers won the eight-hour day. In 1916 the railroad brotherhoods secured the basic eight-hour day by threatening a national strike. By 1929 the eight-hour day and the forty-eight-hour week appeared to be very firmly established in American industry. Here and there an industry was operating on a forty-four- or even a forty-hour week. About half the wage earners in manufacturing were working more than forty-eight hours a week, but even there the eight-hour day was the expressed ideal which, it was hoped, would soon be realized.

The slowness with which change came in certain quarters may be well illustrated by the steel industry. For decades the twelve-hour day and the seven-day week had been the rule in steel. When, in 1919, the workers struck for, among other things, a shorter day, the industry, led by Judge Gary of the United States Steel Corporation, resisted the workers successfully. Public opinion finally turned against the twelve-hour day and the seven-day week so that the steel companies were forced nominally to agree to change to a three-shift system. The actual change, however, took place very slowly.

Table 19 shows the trend of normal hours per week from 1909 to 1929.

TABLE 19

NORMAL HOURS WORKED BY WAGE EARNERS IN MANUFACTURING INDUSTRIES
(in percentage)

Normal Hours per Week	1909	1914	1919	1923	1929
48 hours or less.....	7.9	11.8	48.7	46.1	45.5
Over 48 but under 54.....	7.3	13.5	16.5	21.9	24.9
54 hours.....	15.4	25.8	9.0	8.8	6.3
Over 54 but under 60.....	30.2	22.0	13.8	14.0	14.9
60 hours.....	30.5	21.1	9.0	7.3	7.4 (1.0 not specified)
Over 60.....	8.7	5.8	3.0	1.9	

Although hours have been decreasing, there have been districts in the United States which, prior to the enactment of the Wages and Hours Law of 1938, were very backward. That this was especially true of the Southern states can be seen from Table 20 on page 90.

Hours of work in the depression. With the coming of the depression of the 1930's there came a noticeable reduction in the hours of work even for those fortunate enough to retain their jobs. This reduction, much more

TABLE 20
PERCENTAGE OF WAGE EARNERS BY GEOGRAPHIC DISTRICTS, 1929

District	48 Hours or Less	49 to 54 Hours	55 to 59 Hours	60 Hours and Over
New England	53.7	35.8	8.9	1.4
Middle Atlantic	54.3	30.7	10.2	4.0
East North Central	37.7	43.5	13.7	4.7
West North Central	49.9	29.6	11.1	8.2
South Atlantic	27.1	15.5	37.6	16.9
East South Central	22.7	19.4	29.3	25.3
West South Central	30.9	16.8	20.8	29.3
Mountain	55.3	12.2	21.0	10.5
Pacific	76.9	11.0	4.1	6.7
For the United States as a whole	45.5	31.1	15.0	7.4

Source: U. S. Bureau of the Census, *Census of Manufactures, 1929*.

often expressed in the form of a shorter working week than a shorter working day, was naturally part and parcel of the problem of unemployment. Many of the big corporations, lacking business, kept their factories open only a few days a week. Obviously cuts in pay accompanied the shorter working time. Other companies, imbued with the idea of doing something to ward off the suffering incidental to unemployment, introduced work-sharing, which meant that one six-day job would be shared by two men, each working three days. Since, in the overwhelming majority of cases, the wage was proportionately reduced, the result was underemployment for all the men involved. Reduction in hours of work of this sort was, of course, meant to be only temporary—to be ended as soon as recovery set in. It is not surprising, therefore, to learn that from 1934 to 1936 there was an increase of 5.3 hours in the average work-week.⁵ A few advanced companies, however, used the depression period as an opportunity to make a permanent readjustment in the working week and changed in some instances to the six-hour shift. For example, the Kellogg Company of Battle Creek, Michigan, changed to four six-hour shifts,⁶ as did the Owens-Illinois Glass Company.

The depression did not affect all companies alike, and many retained a long work-week in the years after 1929. The industrial surveys of the United States Women's Bureau and the federal Bureau of Labor Statistics have proved that many concerns maintained a work-week running to fifty-four hours or more, even during the depression.

In 1937 the Florida survey of roughly 30,000 workers in some 270 manu-

⁵ *American Federationist*, XLIII, Part II, 1936, p. 1244.

⁶ The only divisions of the company which do not operate on the six-hour day are the offices, yard crews, and watch service. These work on the eight-hour day and forty-hour week basis. (Letter from the company to the author, October 28, 1938.)

facturing plants ⁷ showed that over 40 per cent of the women and over 12 per cent of the men worked more than 54 hours a week. A report of the Department of Labor of North Carolina showed 20 per cent of the cotton mills operating on at least a fifty-five-hour week.

Since 1933, legislation, particularly federal, has been instrumental in affecting the length of the work period. From 1933 to 1935 the codes of fair competition provided for in the National Industrial Recovery Act fixed maximum working weeks for industries covered by the codes. The Guffey Coal Act made possible a similar situation in bituminous coal, and the Walsh-Healey Act dealt with, among other things, hours of work on materials produced for the federal government. Most important of all such measures, however, was the Fair Labor Standards Act of 1938, commonly known as the Wages and Hours Act.

TABLE 21

AVERAGE WEEKLY HOURS IN SELECTED MANUFACTURING INDUSTRIES, 1934 AND 1937

Industry	1934	1937
Blast furnaces, steel works, etc.	30.5	38.7
Cast-iron pipe.	29.7	37.8
Hardware.	33.1	38.5
Steam and hot-water heating apparatus.	34.6	40.0
Agricultural implements.	36.5	39.9
Electrical machinery.	34.0	39.4
Foundry and machine-shop products.	34.7	41.9
Machine tools.	37.2	45.1
Radios and phonographs.	33.7	36.3
Textile machinery and parts.	35.2	42.4
Aircraft.	39.4	42.3
Automobiles.	33.3	35.9
Shipbuilding.	31.0	37.1
Smelting and refining.	37.5	41.3
Lumber sawmills.	33.4	41.0
Glass.	33.8	37.1
Cotton goods.	33.2	36.2
Silk and rayon goods.	33.4	35.9
Woolen and worsted goods.	33.3	35.3
Clothing, men's.	27.8	32.0
Beverages.	38.4	40.4
Canning and preserving.	32.9	37.9
Slaughtering and meat packing.	40.8	41.0
Printing and publishing, book and job.	36.1	39.4
Printing, newspapers and periodicals.	37.3	37.0
Petroleum refining.	34.9	36.0
ALL MANUFACTURING INDUSTRIES.	34.7	38.5

Source: *Statistical Abstract*, 1938. Pp. 320-21.

⁷ *Wages and Hours in Florida Industries*. U. S. Women's Bureau. Washington, D. C. 1938.

Changes in the average hours of work in selected manufacturing industries between 1934 and 1937 are indicated in Table 21. This table contrasts the low average hours brought about by spreading the work under the N.R.A. with the longer average hours worked in 1937, a year of relative prosperity.

Along with the campaign for a shortened number of hours which culminated in the Wages and Hours Act went the campaign for a five-day week. While Henry Ford was not the first to put this actually into operation, he has operated on a five-day week since 1927. General Motors did not take similar action until the depths of the depression in 1932. At this time Standard Oil of New Jersey and Socony-Vacuum also joined the procession.

It must be emphasized that while hours have been shortened, productivity has been vastly increased, so that in many cases the workers are turning out more in a thirty-hour week than they did working twelve hours a day, seven days a week. In most types of industry, the workers' productivity has more than doubled since 1914. Our society might well consider whether it would not be more economical, not to say more efficient, to adopt the thirty-hour week and thus employ millions who are now unemployed. At present the government has to subsidize these workers and pay them out of the public treasury. With the shorter work week, industry itself might employ them, thus reducing the strain on the government treasury.

ECONOMIC EFFECTS OF SHORTER HOURS

There is increasing evidence to show that the shorter work-day and the shorter work-week have decided economic advantages. Judge Gary, as head of the United States Steel Corporation, claimed that it would be uneconomical and financially disastrous to adopt the eight-hour day, but after this change was made in his steel mills, the corporation made more money than before. Apparently, the shift from twelve hours to eight did not seriously impair output or increase costs. The United States Public Health Service ⁸ in 1920 compared the efficiency of a metal factory working a ten-hour day and a twelve-hour night with a similar plant having three eight-hour shifts. They found that in the plant having the longer hours the morale was bad, the employees consciously limiting output. They also found that accidents and lost time were increased. Production was erratic in the plant working the longer hours and steady in the plant having three shifts.

One reason why employers hesitate to reduce the hours of labor is that they feel that the overhead costs of expensive machinery and factories go on night and day, whether or not the machines are operated. Because they want to secure the maximum possible output and keep the machines run-

⁸ U. S. Public Health Service, *Comparison of an Eight-Hour Plant and a Ten Hour Plant*. Government Printing Office, Washington, D. C. Bulletin 106. 1920.

ning night and day, employers seldom reduce the hours of work voluntarily unless they are affected by a depression, in which case they cannot use a large output. This is one reason why, in the 1930's, when the factories could not keep running steadily anyway, the hours of work have been shortened so easily. While it would be possible to run a factory twenty-four hours a day with four shifts of six hours each, most manufacturers in the past have felt that this would increase labor costs.

Since the employer must compete with factories in other places, he is unwilling to cut hours unless competing plants do. Then, too, the employer may meet competition abroad. The result is that when hours are shortened, the employer feels constrained to maintain the same wage rate as before. Thus in effect the workers' total receipts are decreased, whereas the employer's return tends to increase slightly or remain constant.

Trade-unions argue that shortening of the work-day and the work-week should not adversely affect the total amount paid to the workers. They claim that output actually does not fall off, and that even if there is a slight tendency toward reduced output, the quality is so much improved that the employer can easily afford to maintain the wage scale.

One cannot state that in all cases the employer can afford to maintain the same weekly payment for a shorter number of hours, but it seems probable that increases in technological efficiency and willingness on the part of the employer can bring this about. If the employer could be assured that profits would not fall by a decrease in hours, he might not be averse to making the change.

On the whole it seems clear that up to the present time, as hours of labor have been decreased, output has been maintained. In fact, the Federated American Engineering Societies, in publishing their findings regarding the eight-hour day as over against the twelve-hour day, declared that individual efficiency was improved over 25 per cent and the machinery was shown to have lower costs per unit than before.

The growth of productivity of railroad employees as illustrated by the decrease in the number of freight brakemen and the increase in the number of revenue ton-miles per hour worked shows that while the total of man-hours may have been decreasing, much more work has been accomplished per man-hour.

In 1929 the National Industrial Conference Board made a study of ninety-four plants running on a five-day week basis⁹ which had not only changed to a shorter week but had also reduced the total number of hours per week. Forty-six of these companies (49 per cent) declared that they found no difference in output after the change to the shorter week, while

⁹ National Industrial Conference Board. *The Five Day Week in Manufacturing Industries*, New York, 1929.

19 per cent reported an actual increase. Almost 32 per cent of the companies reported that in their experience it had been unfavorable. The report of this

TABLE 22
CLASS I RAILROADS

Year	Number of Employees	Index	Ton-Miles per Hour Worked	Index
1916	63,285	100.0	1,823	100
1926	61,576	97.3	2,665	146
1936	41,661	65.8	3,942	216

Source: The Brotherhood of Railroad Trainmen, *Shorter Workday*. Cleveland. 1937. Front-piece.

study showed that among the advantages of the change were the improvement in the health of the employees and the improvement of morale, and the elimination of many absences and consequent inferior work on Saturday mornings. Under such an arrangement Saturday mornings proved an ideal time in which to check up on the machinery and make any repairs needed for the following week's work. It was also found that certain overhead charges were eliminated because of the closing down of power plants, the decreased use of heat and light, and so on.

SOCIAL EFFECTS OF SHORTER HOURS

Public opinion is generally in favor of a shorter week as far as the social consequences are concerned. Some decades ago employers fallaciously maintained that leisure was bad for the workers because they drank, gambled, and dissipated. In actual practice, almost the exact reverse holds. When a worker was subjected to long hours of work and great mental strain and fatigue, he was likely to take stimulants and to indulge in other forms of dissipation in the few hours in which he was free.

With increasing leisure have come more wholesome forms of recreation. Apparently there has been less bodily weariness, and the emotional and nervous strain has been lessened. As a result, accidents have decreased, health has improved, and society as a whole has benefited.

Scientific studies tend to show that the welfare of the children in the families whose parents work shorter hours has been improved. Under a system of long hours of industrial work, children had to be alone at home after school, and on Saturdays they did not have the companionship of their fathers. With the five-day week, the father has assumed a more normal relationship to his family, and as a consequence juvenile delinquency has

tended to decrease in spite of the unfavorable effect of urban conditions and increasing industrialization. Furthermore, there is considerable evidence to show that the shorter number of hours has resulted in the worker's becoming a better public citizen. He has the leisure to take more time for his trade-union and to interest himself in civic affairs. Workers are no longer so easily swayed by the political biases of the newspapers, for they have other avenues of getting information. To the extent that shorter hours contribute to these ends, the balance of scientific opinion from a social and civic standpoint seems to tip the scales heavily in favor of a shorter week and a shorter day in an industrial society.

We do not yet know what limits, if any, can safely be made to the movement for shorter hours, but it seems clear that the thirty-hour week is probably socially advantageous, and with increasing technological efficiency, will tend to become more widely prevalent.

METHODS OF ATTAINING SHORTER HOURS

In later sections of this book we shall deal with the various methods by which hours of work have been, and can be, reduced. For present purposes, we need merely indicate that the reduction has occasionally been effected by the employer's voluntary action, but much more frequently by trade-unions and by legislation.

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QUESTIONS

1. What has been the extent of long hours during the depression?
2. Discuss the pros and cons of the thirty-hour week.

3. It is said that shorter hours merely mean more "deviltry" on the part of the workers. Is this true?

4. What beneficial results seem to have come from the introduction of the eight-hour day?

5. Why do some groups of workers have the thirty-hour week while others work fifty-four hours?

6. What are the laws in your state limiting working hours? Are they enforced?

7. Has labor in the United States decreased its hours of work more than it has increased the real wages? Give the reasons why.

8. Choosing the side you feel valid, prepare a statement for businessmen either opposing or favoring the movement for shorter hours.

SUBSTANDARD

WORKERS—

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WOMEN IN INDUSTRY

WITHIN the ranks of American labor are various large groups of workers who, for one reason or another, are termed *substandard workers*. As used in this connection, substandard means not inferior performance such as would be expected from the aged and the infirm and the unskilled. Rather, it means that the persons involved are subjected to a variety of handicaps; typically, they are paid lower wages, are given inferior tasks to perform, and work under conditions substantially less favorable than those enjoyed by the great majority. The low status of the substandard workers causes two kinds of problems to emerge: (1) the problems of the substandard workers themselves arising out of their low wages, their onerous working conditions, and their inability to improve their situation; (2) the problems of the other workers whose superior position is endangered by the presence of large numbers of workers who may be able to perform the same work for much less money or under much worse conditions. In the first instance, if the more poorly situated workers are compelled to exchange their labor for less than a living wage or have to work excessive hours, the workers themselves are hurt. Second, the competition in the labor market which is provided by substandard workers makes it more difficult for the other workers to maintain their wages, hours, and so on, especially in those cases where the substandard workers constitute an army of potential strikebreakers. It is difficult, therefore, to grasp the problems of American labor in their entirety without considering the substandard workers. Who are they? What factors make them substandard?

THE NEGRO WORKER

Perhaps the outstanding illustration of substandard labor, the American Negro is in a particularly unenviable position. He suffers from a mass of accumulated prejudice and superstition, based on the belief that he is inferior to the white man and that he is essentially unwilling to work. Typically, his position in the economic system is much more insecure than that of his white colleagues; the Negro, it is commonly said, is the last to be hired and the first to be fired. Because of his great difficulty in securing employment, the Negro's bargaining position compels him to accept almost any terms offered; his wages, then, are likely to be lower on the average than the wages of non-Negro workers. Even in those cases where the wage rates for white and for Negro workers are the same, the greater insecurity of the latter, added to the fact that they seldom get an opportunity at the better-paid jobs, means that their income is much lower. In a recently published study dealing with family income in Chicago,¹ for example, 71.7 per cent of Negro families studied had incomes of less than \$1,000 for 1935-36, while only 27.4 per cent of the native white and 34 per cent of the foreign-born whites had incomes of less than \$1,000. Only 5.3 per cent of Negro families had incomes of \$2,000 and over, the percentages for the other two groups being 33.6 per cent and 25.3 per cent respectively. The data are affected, of course, by the fact that 46 per cent of the Negro families were on relief (and almost invariably, therefore, had less than \$1,000 for the year) while only 10.6 per cent and 12.2 per cent of the other groups were on relief.²

Even the most capable Negroes are seldom given an opportunity to improve their economic status in any material way. The color line is an effective barrier to learning a skilled trade, rising to an important supervisory position, or entering the professions. In establishments where both white and Negro workers are employed, it is not an uncommon practice for the employer to play off one group against the other or to foment discord and race prejudice in an effort to keep the two groups apart. The dirtiest and most menial tasks are usually reserved for the Negroes, and their progress in the vast majority of cases is strictly limited. Trade-unions, except for the radical organizations, have usually been reluctant to admit Negro members, and, in a number of cases, have expressly barred them by a provision in the union's constitution. Some unions which do admit Negroes have insisted on organizing them in "Jim Crow" locals: that is, locals composed exclusively of Negroes. By the prejudice of employers, the community, and other workers, the Negroes have been made to feel that they are a group apart. One of the consequences

¹ *Family Income in Chicago, 1935-36*. U. S. Department of Labor, Bureau of Labor Statistics, Bulletin 642. Vol. I. Government Printing Office, Washington, D. C. 1939.

² *Ibid.*, p. 6.

has been that they have frequently served as strikebreakers in labor disputes, especially in the steel industry.³ Within the past several years significant steps forward have been made in the organization of Negroes, especially in the mass-production industries and in the Southern rural areas. What the result of this will be if continued, it is hard to say, but certainly some improvement in the Negro's status may be expected.

That the Negro suffers from prejudice rather than from some personal shortcoming is evident when we look at the conditions under which he lives. Almost without exception in our large cities the Negroes are crowded into a small area where they are compelled to pay exorbitant rentals for inferior accommodations. This causes great overcrowding in the apartments, for the large rental demanded brings great pressure on a very low income and undoubtedly contributes to the high disease and mortality rates common to Negro areas.

THE IMMIGRANT

Except for a few special groups of immigrants like the Chinese, the Japanese, and the Filipinos, immigrants or at least their descendants are readily assimilable into the great body of American labor; the disabilities under which immigrants labor are therefore not permanent, as in the case of the Negro. Nevertheless, or perhaps because of this fact, the problem of the immigrant has been an important one for labor. Immigrants to the United States have typically been people of small means who have had to work for their living. Their economic situation, added to their general lack of skill, to their language difficulties, and so on, has meant that their bargaining power was relatively weak and that generally they have been compelled to accept whatever work they could get at whatever wages the employer was willing to pay. Moreover, in a great many instances, the immigrants' former standard or plane of living was substantially below the American level, so that the immigrant might, for a time at least, be more than content with a wage which the American worker regarded as wholly inadequate. It was the possibility of securing large quantities of cheap labor which caused many American firms to send "missionaries" to various European countries during the last half of the nineteenth century to recruit workers on a contract basis. Much the same thing has been true, at least as far as certain sectors of agriculture are concerned, with Mexicans and Puerto Ricans.

To the American worker, the immigrant represented a twofold threat. In the first place, the coming of the immigrant meant an increase in the labor supply which the native workers found especially objectionable during periods of hard times. Second, not merely was there an increase in the net

³ See Horace R. Cayton and George S. Mitchell, *The Negro Worker and the New Unions*. University of North Carolina Press. Chapel Hill. 1939.

labor supply, but the addition was in large part composed of people willing to work for less than the American workers regarded as fair. Hence it has been the policy of American labor from an early period to agitate for increasingly severe restrictions on immigration. The Oriental Exclusion Act, the prohibition on the importation of contract labor, and the quota provisions of our present immigration law are traceable in part at least to the attitude of domestic labor.

The virtual cessation of immigration during the past decade has rendered this problem much less significant than formerly; that the basic objection, however, survives is evident from the refusal on the part of many to consider the admission to our shores of refugees from the totalitarian states of Europe.

THE CONVICT

Prison labor, too, plays a less important role today than it did a few years ago. Theoretically, it appears very desirable that the inmates of our penal institutions be given some useful work to do, especially if we expect them to be useful members of the community when they are released. But if the products of prison labor compete on the open market with those of free labor, it is clear that the lower costs of the former would permit them to be sold at much lower prices on the market, thereby injuring the free worker. This would apply with particular force to certain states, especially the Southern ones, which leased convicts to private employers for a nominal sum. These employers, having only a small wage bill, were concerned with getting as much work out of the convicts as possible and as a result were able to undersell competitors who did not enjoy the same cheap labor. Regardless of the adverse effect on the convict helpless under the exploitation of the private contractor, the opportunities for free labor were restricted by the competition of cheap convict labor. Until a few years ago in the work-shirt industry, for example, a large proportion of the total volume was produced by convicts.

Cognizant of the problem, labor fought for decades against the use of convict made products. In some states they were successful, in combination with other groups, in limiting the work of convicts to products, such as automobile license plates, which were not sold on the open market; in other states they secured laws limiting convict goods to state or public enterprises only. The refusal of the Southern states to impose similar limitations led to a demand for Congressional action. This culminated in the passage of the Hawes-Cooper Act in 1929 and the Ashurst-Sumners Act in 1935. The former, which became effective in 1934, provided that convict-made goods shipped into any state were to be subject to the laws of that state precisely as though they were intrastate goods. The Ashurst-Sumners Act provided for the proper labeling of convict-made goods and made it unlawful to ship such

goods into any state in violation of its laws. Inasmuch as the Supreme Court declared both of these statutes to be constitutional,⁴ any state which wishes to do so may protect itself against being flooded by convict-made goods from other states.

WOMEN IN INDUSTRY

It is not altogether accurate to regard the problem of women in industry as wholly a case of substandard labor, for many other issues are involved. Yet it remains true that women have in the past constituted the largest single group of substandard workers and that many of the problems of women in industry have arisen out of this fact.

Women have always worked hard. Before the Industrial Revolution, however, the woman worker was generally subjected to less tension. Speed-up systems were unknown, and a great share of the work was done out of doors. Under modern industrialized mass production, women have to work in large factories employing thousands of workers, and are forced to keep pace with a machine which often is geared to the capacity of the strongest. In the United States, according to the 1930 census, three-fourths of the women were not "gainfully employed," but most of these—some 24,500,000—were busy working as housewives. There were in addition 10,700,000 who were gainfully employed. Out of this number only 263,000 "businesswomen" were in managerial positions.

Ever since 1870 the number of women gainfully employed has been steadily increasing. In 1870 only 13 per cent of those so employed were women. Since then the percentage has risen as follows: 1880, 15.2; 1890, 17.1; 1900, 18.3; 1910, 19.1; 1920, 20.5; and in 1930 the percentage had risen to 22 per cent of the total labor force. In other words, two out of every nine workers were women or girls. The actual number of women employed has risen from 2,647,000 in 1880 to 10,752,000 in 1930, and it seems probable that the number will continue to rise.

Kinds of work. In 1930, 3,180,000 women, or nearly 30 per cent, served in domestic or personal service—that is, in hotels, restaurants, beauty parlors, or as cooks, chambermaids, and so forth. This represents a gain of over 1,000,000 in the number so employed since the previous census. The rest of the women and girls were employed in clerical, manufacturing, professional trades, selling, agriculture, transportation, and communication. The number of women clerical workers increased about six times between 1890 and 1930. In the latter year there were almost 2,000,000 stenographers, typists, office appliance operators, bookkeepers, and cashiers. There was also

⁴ *Whitfield v. Ohio*, 297 U. S. 431 (1936) affirming constitutionality of Hawes-Cooper Act; *Kentucky Whip & Collar Co. v. Illinois Central Railroad*, 299 U.S. 334 (1937) affirming constitutionality of Ashurst-Sumners Act.

a large influx into the selling trades. Here 1,000,000 women were occupied as saleswomen in stores and shops and in selling insurance, real estate, and other things. In the professional field were 1,500,000. Of these, the greatest numerical gains from 1910 to 1930 came in teaching and nursing. In public kindergartens and elementary schools in 1933-34 89 per cent of the teachers (461,420) were women. In industry the clothing factories employ most of all, 353,486, but women are employed in all forms of manufacturing, even making shot and shell and helping to produce automobiles.

Three-quarters of a million girls (720,723) between the ages of ten and seventeen are at work. Elderly women are also employed in a variety of tasks. Of the more than a quarter of a million employed as scrub women in office buildings, 40,000 are over seventy-five years of age.

From 1920 to 1930 the number of employed women in beauty shops has increased more than in any other occupation, rising nearly four times over.

Doing triple duty. It must not be thought that the women whom the census does not include in the number "gainfully employed" are really not working. Three-fourths of all women are homemakers, and of these, 95 per cent have no paid help in the home. Naturally those on the farms work harder than those in the cities, but all of them average about fifty hours per week. The overwhelming majority do not have sufficient money to buy laborsaving devices, and the life of the average homemaker, even without a factory job, is not an easy one.

Why do women work outside the home?

The United States Women's Bureau points out:

It cannot be emphasized too frequently that married women are employed for the most part because they need to make a living. The fact that 55.9 per cent of them are in the two occupational groups of domestic service and manufacturing is one indication of this fact. Many studies have shown that married women are often responsible for the support of others. The importance of their wage to the family exchequer has been enhanced in a time of widespread unemployment.⁵

In 1937 the National Federation of Business and Professional Women's Clubs sent out questionnaires to its 58,587 members, receiving replies from 12,043. Forty-eight per cent of these women, who are presumably more fortunate than most, have persons partially or entirely dependent upon them, and one out of every six has the sole responsibility of supporting a household of from two to eight.⁶ Only 3.4 per cent of those replying declared that they did not need to work to support themselves or their dependents. Married women who work outside the home in industry have the most difficult task

⁵ U. S. Women's Bureau, *News Letter*, April 1, 1932.

⁶ Public Affairs Committee, *Why Women Work*. Public Affairs Committee, Inc. New York. 1938.

of all, for they have three tasks to perform simultaneously: their factory work, their services as wife and mother, and the care of the home, including the housecleaning, cooking, laundry work, and marketing. In many workers' homes, especially those owned by factories in the South, there are no plumbing facilities or running water. The shortened work-week brings small benefits to these women, for after working in the factory six days a week they may have to spend all day Sunday doing washing, cleaning, and cooking. Before going to the factory, most of the women have to get breakfast, see that the children are cared for and made ready for school or day nursery, and plan and partially prepare the night meal. After a full day's work in the factory, the wife has to prepare the evening meal and put the children to bed. No wonder one of them said: "Tired! too tired to hear the alarm clock go off at five in the morning."⁷

Usually the working-class wife is subject to recurrent childbearing, whether she wishes it or not. The gradual spreading of birth-control information has little affected the wives in the factories in the South and in other industrial areas outside the large cities. The number of working-class women who have become physical wrecks as a result of bearing many children in rapid succession is not inconsiderable.⁸ The United States Children's Bureau declares that of the 16,000 mothers who die annually in childbirth, over 90 per cent might have been saved. One cause of this high mortality is that the mothers are compelled by circumstances to work in the factories while pregnant. If work is stopped, the pay ceases. When the family income is not sufficient to provide adequate food and clothing, the pressure on a pregnant mother to continue work after she should stop is almost irresistible.

Factory-working mothers tend to return to work too soon after childbirth, many deaths of infants during the first year of life being due to the fact that their mothers cannot provide adequate care. Statistics of the Children's Bureau show that the deaths in the poorer homes in the first year of childhood are three times as great as those in the families of the well-to-do.

Foreign-born women, because of poverty and the discrimination against them, have to work outside the home even more than the poor native families. The extremely low incomes of Negro families force even greater numbers of colored women to seek employment, and usually the jobs which they can secure are the worst in our industrial civilization. These may be scrubbing and cleaning the floors and stairs or the toilets of a factory. If a Negro woman is fortunate enough to be employed in a mill, she may receive the most undesirable jobs or be assigned night work, where the hours are much longer than those of the day shift.

⁷ Grace Hutchins, *Women Who Work*. International Publishers. New York. 1934. P. 44.

⁸ Margaret Sanger, *Motherhood in Bondage*. Brentano's. New York. 1928.

When women have many young children whom they are unable to leave alone, they try to secure homework. In spite of all that has been done to prevent this form of labor, it exists in nearly every state in the Union. Surveys show that five-sixths of all homework is done by mothers who have children and thus find it impossible to secure other work. The pay for homework is notoriously low, often only two or three dollars a week. In 1931, 14,000 homeworkers were employed in New York State and over 10,000 in Pennsylvania. They made all sorts of articles, all the way from toys, rag carpets, cheap jewelry, and carding buttons, to men's neckwear, artificial flowers, and powder puffs. Those engaged in homework have to go to the factory to get and return the work and to secure their pay, and they may learn after making the trip that there is no work on hand.

Investigations made in Philadelphia showed that women who worked at top speed at home, and were able to have aid from other members of the family, received the munificent remuneration of about twelve cents an hour. According to the Labor Department of Pennsylvania, in June, 1933, the average weekly wages were about \$2.87 for women's clothing and \$4.16 for men's.⁹ Laws regulating homework are almost impossible to enforce. The frequent violations are understandable in view of the fact that most of the women who do this work are in desperate need and are willing to accept anything under any conditions. It seems probable that effective organization of women into trade-unions would help them to secure adequate hours of work, provisions for maternity and health insurance, and a fair compensation for work.

Displacing men. Unfortunately in the United States we have no statistical measure of the exact degree to which women have displaced men. We know that such displacement is occurring, but its exact extent is a matter of conjecture rather than fact. We have many concrete examples of women actually displacing men. For example, in the Marlin Firearms Company, during the depression of 1937-38, large numbers of men laid off were replaced by women hired at much lower wages. During the World War, when men were sent abroad, women were used in their places. When the War was over there was a tendency to retain the women workers.

There are, of course, some occupations in which it is difficult for women to secure employment. Women are not readily adaptable to some of the highly skilled trades, such as carpentering and plumbing; and in the heavy industries requiring great physical exertion, women are not so readily employed. Furthermore, most of the states have regulations affecting the employment of women which limit hours and prohibit night work. Some states have a definite minimum wage which is required for women.

⁹ *Labor Record*, June 9, 1933.

In recent years some differences of opinion have arisen, even among women, as to whether protective legislation is or is not desirable. Some extreme feminists believe that there should be no discriminatory laws affecting women since they desire to secure absolute equality between the two sexes. Usually those who oppose such laws are college graduates who do not themselves do factory work.

An investigation by the Women's Bureau of the United States Department of Labor has established the fact that laws limiting the number of hours of women have not actually handicapped them but have tended rather to regulate their employment. Laws abolishing night work for women, on the other hand, have seemed to affect adversely the employment of women in certain industries, some of which may not be harmful. It was the belief of the Bureau, however, that such legislation by itself did not so much affect the employment of women. Of more importance were factors such as the wages paid, the capacity of women, the kind of labor needed, and the extent of the labor supply.

Hours and earnings. Because women in industry often have other duties to perform at home, they are likely to have less endurance on the job than men. This means that it is extremely important that their hours of work should not be too long.

The states have been to a large extent negligent in protecting women. Four states—Iowa, West Virginia, Alabama, and Florida—have had no law limiting the hours of work for women. Now that a federal act has been passed, conditions have improved, but there are still firms that evade the law or that do not come under its provisions because they sell products solely within the state.

Abroad, women have often been protected by compulsory rest periods. Sometimes such laws provide for an hour's rest at noon, four countries providing that in every eight-hour working day there shall be two hours of rest. In the United States only thirteen states have provided for noonday rest periods for women, ranging from thirty minutes to an hour.

Night work is still common. Not a single Southern state prohibits night work for women in the mills. Actually only one-third of the states prohibit night work, despite its known injurious effects on women. In New Jersey there is no enforcement because the law provides no penalty.

The United States Women's Bureau in 1932, in the depths of the depression, commented as follows: "The most surprising thing in the cotton mills is the change in hours, not, as one would suppose, their decrease, but their increase. . . . Night running became almost the rule rather than the exception. . . . The night hours were 55 hours a week and 11 hours each night."¹⁰

¹⁰ U. S. Women's Bureau, *News Letter*, February 1, 1933.

While the great majority of women now have a half holiday on Saturday and a full holiday on Sunday, it remained for a federal law actually to decrease hours of labor for most of the women factory workers.

Hours of labor for women have, in the past, been long, and wages have been low and inadequate. In the study made by the National Federation of Business and Professional Women's Clubs which surveyed a special group with comparatively high salaries, the median earnings of the 12,000 reporting was \$1,315. This, of course, included executives, managers, and supervisors. Of the total number there were 3,113 with annual earnings under \$1,000, and of these 299 earned less than \$500. The median for domestic and personal service workers was \$610.¹¹

In the manufacturing industries the average weekly earnings for women were about \$7.75 in 1914, prior to the World War, and came to just under \$17.00 in 1937. In terms of purchasing power, however, this would amount to about \$11.70, in terms of the 1914 real wages.

As a general rule, wages are lowest in five-and-ten-cent stores, laundries, and in the industries manufacturing candy, textiles, tobacco, and women's clothing. Negro women earn, on the average, only about 60 per cent of what white women earn for the same kind of labor. In the factories of the American Tobacco Company, for instance, Negro women were earning only 10 or 12 cents an hour in 1931.¹²

During the depression women's wages, on the whole, declined more than those of men. It has always been generally true that women receive

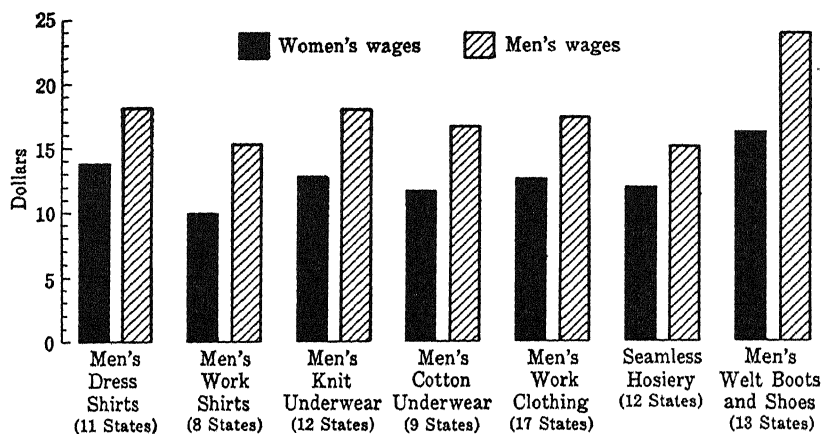


CHART 4.—Average Weekly Earnings of Women and of Men in Certain Clothing Industries

Source: M. E. Pidgeon, *Differences in the Earnings of Women and Men*. U. S. Women's Bureau, Bulletin 152. Government Printing Office. Washington, D. C. 1938. P. 54.

¹¹ *Why Women Work*, *op. cit.*, p. 13.

¹² Virginia Department of Labor and Industry, *Annual Report*, 1931.

lower wages than men for the same work. The United States Women's Bureau declares that the figures of the three states which have tabulated men's and women's wages for periods from twelve to twenty years show that, in manufacturing, women's average wages have been less than 60 per cent of those of men.¹³

That women in various occupations receive roughly from 50 to 75 per cent of what men are paid appears from Chart 4 (1935-38), Table 23 (1933-37) and Table 24 (1930-35).¹⁴

TABLE 23
MEDIAN WEEKLY EARNINGS

INDUSTRY	MEDIAN WEEK'S EARNINGS		PER CENT WOMEN'S EARNINGS FORMED OF MEN'S
	Men	Women	
Beauty shops, 1934.....	\$22.50	\$14.25	63.3
Laundries (21 cities, 1934, productive workers, by city).....	12.50 to 21.45	6.67 to 13.05	33.2 to 67.8
Leather gloves (New York, July, 1933) . .	23.45	12.65	53.9
Men's clothing, 1936:			
Shirts—Dress (11 states).....	18.35	13.50	73.6
Work (8 states).....	15.55	9.85	63.3
Underwear—Cotton (9 States)	16.70	11.40	68.3
Knit (12 states).....	18.10	12.85	71.0
Work clothing (17 states).....	17.25	12.50	72.5
Seamless hosiery (12 states), 1936.....	15.05	11.95	79.4
Men's welt boots and shoes (13 states), 1936-37.....	23.80	16.35	68.7

Source: Pidgeon, *op. cit.*, p. 54. Data compiled from studies of industries made by the Women's Bureau.

Equal pay for equal work. Should women receive equal pay for equal work? It is argued that since women are likely to marry and leave their jobs, and since, even if they stay in a factory, they are apt to have a higher absence rate than men, they should receive less pay. It is also argued that they are less efficient. This last argument is immediately open to question because many women working on a piecework basis are paid less for identical production. The United States Women's Bureau reports a number of employers as saying that women are actually *more efficient than men* in a good many operations. Since a high percentage of women have to support dependents, it cannot be argued that men are entitled to higher wages solely because they are supporting families while women are not. Where employers

¹³ M. E. Pidgeon, *Differences in the Earnings of Women and Men*. U. S. Women's Bureau. Bulletin 152. Government Printing Office. Washington, D. C., 1938.

¹⁴ *Ibid.*, p. 55.

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TABLE 24
MEN'S AND WOMEN'S AVERAGE EARNINGS

INDUSTRY	DATE OF PAY ROLL	NUMBER OF EMPLOYEES		AVERAGE WEEKLY EARNINGS			AVERAGE HOURLY EARNINGS		
		Men	Women	Men	Women	Per Cent Women's Earnings Formed of Men's ²	Men (Per Cent)	Women (Per Cent)	Per Cent Women's Earnings Formed of Men's ²
Bakery products.....	1931	3	3	3	3	—	3	3	—
Bread.....	—	27,856	591	\$29.82	\$13.93	46.7	55.3	29.8	53.9
Cake.....	—	1,552	1,240	24.25	12.11	49.9	48.6	27.5	56.6
Boots and shoes.....	1932	28,046	21,620	19.73	12.58	63.8	49.3	30.8	62.5
Cane-sugar refineries.....	1930	11,027	863	25.96	12.42	47.8	47.2	28.9	61.2
Cigarettes, snuff, chewing and smoking tobacco ⁴	1935	11,564	12,241	17.11	12.23	71.5	48.5	37.3	76.9
White.....	—	3	3	19.48	13.16	67.6	54.8	40.4	73.7
Negro.....	—	3	3	13.13	10.30	78.4	37.7	30.8	81.7
Cotton textiles ⁵	1934	3	3	3	3	—	3	3	—
North.....	—	20,164	14,891	14.48	12.18	84.1	42.1	37.3	88.6
South.....	—	41,561	22,786	10.29	9.19	89.3	33.9	32.1	94.7
Dyeing and finishing of textiles ⁶	1934	3	3	3	3	—	3	3	—
Cotton.....	—	10,528	2,530	17.32	12.46	71.9	49.5	40.1	81.0
Silk and rayon.....	—	4,306	507	20.01	14.05	70.2	61.7	43.8	71.0
Furniture.....	1931	28,876	1,783	17.22	11.40	66.2	41.6	31.4	75.5
Hosiery.....	1932	12,908	20,319	21.80	11.54	52.9	49.4	29.2	59.1
Leather.....	1932	18,755	2,644	20.78	12.41	59.7	49.3	30.3	61.5
Machine-shop products.....	1931	64,921	1,017	24.36	15.85	65.1	63.7	40.8	64.1
Men's clothing.....	1932	16,511	16,540	24.75	13.01	52.6	64.1	36.1	56.3
Motor vehicles ⁷	1934	146,450	14,134	27.45	17.80	64.8	70.7	48.9	69.2
Factory.....	—	139,792	9,711	27.49	17.67	64.3	71.0	50.5	71.7
Cars.....	—	3	3	28.45	19.16	67.3	73.0	51.8	71.0
Parts.....	—	3	3	24.68	15.30	62.0	65.1	45.0	69.1
Office.....	—	6,658	4,423	26.58	18.08	68.1	65.3	45.9	79.3
Cars.....	—	3	3	27.06	20.51	75.8	66.4	52.1	78.5
Parts.....	—	3	3	25.06	19.89	79.4	62.0	50.5	81.5
Paper boxes, folding ⁸	1935	6,934	1,831	23.25	14.62	62.9	57.7	38.0	67.4
North.....	—	5,616	1,702	23.68	14.86	62.8	58.6	39.5	67.4
South.....	—	418	129	17.52	11.44	65.3	44.4	31.6	71.2
Set-up ⁹	1935	4,104	8,487	22.08	13.99	63.4	54.5	37.8	69.4
North.....	—	3,821	7,893	22.58	14.15	62.7	55.6	38.2	68.7
South.....	—	373	594	16.98	11.85	69.8	42.9	32.5	75.8
Pottery.....	1932	3	3	3	3	—	3	3	—
Semivitreous.....	—	4,086	2,381	10.31.74	10.15.95	50.3	53.5	29.2	54.6
Vitreous.....	—	1,425	994	10.25.03	10.10.72	42.8	54.6	26.4	48.4
Rayon and other synthetic yarns.....	1932	14,869	10,457	19.51	12.55	64.3	40.8	28.3	69.4
Shipping containers (corrugated and solid fiber) ¹¹	1935	9,291	2,748	22.38	15.00	67.0	53.8	39.8	74.0
North.....	—	8,463	2,529	22.84	15.28	66.9	54.9	40.2	73.2
South.....	—	828	219	17.64	11.90	67.5	42.6	34.5	80.0
Silk and rayon goods.....	1931	21,885	27,151	23.45	14.46	61.7	48.5	33.5	69.1
Slaughtering and meat packing.....	1931	45,523	8,032	21.57	13.61	63.1	47.0	32.1	68.3
Underwear—knitted.....	1932	2,174	9,564	17.72	9.56	54.0	40.8	26.0	63.7
Women's neckwear and scarfs ¹²	1935	3	3	3	3	—	3	3	—
New York City.....	—	3	3	33.14	21.12	62.6	88.0	58.0	65.9
East (except New York City).....	—	3	3	25.80	13.79	53.3	64.0	36.0	56.3
Midwest and far West.....	—	3	3	26.83	14.19	52.0	70.0	41.0	58.6
Woolen and worsted goods ¹³	1934	18,091	13,893	17.58	11.94	67.9	3	3	—

¹ Except as noted, from summary in *Monthly Labor Review*, July, 1933, pp. 140-143.² Computed by Women's Bureau.³ Not available.⁴ U. S. Bureau of Labor Statistics. *Monthly Labor Review*, May, 1936, p. 1326.⁵ *Ibid.*, March, 1935, pp. 617, 619, 622.⁶ *Ibid.*, May, 1936, pp. 1337, 1343, 1347, 1352, 1355, 1359.⁷ *Ibid.*, March, 1936, pp. 523, 524, 527.⁸ *Ibid.*, June, 1936, pp. 1589, 1591, 1608.⁹ *Ibid.*, August, 1936, pp. 412, 414, 430.¹⁰ 2-week pay roll.¹¹ U. S. Bureau of Labor Statistics. *Monthly Labor Review*, September, 1936, p. 687.¹² *Ibid.*, July, 1936, p. 150. Number in women's neckwear and scarfs not reported, but 39 plants included.¹³ *Ibid.*, June, 1935, pp. 1451, 1457.¹⁴ *Ibid.*, p. 55.

can prove that women are not actually worth as much to them as men, then a wage differential might be justified. The weight of present evidence, however, seems to indicate that for the same work women should receive the same rate of pay as men. This might even be to the economic advantage of men, because if women were paid the same wages there would not be the prevailing tendency to substitute women for men in so many branches of industry.

Health conditions. Because so many women have to accept positions in factories which are less well regulated and are often in marginal concerns, they are subjected to poor health conditions. The United States Women's Bureau mentions certain conditions which cause poor health for women in industry: bad ventilation, dust, excessive fatigue from work, with improper rest, improper heating facilities, poisons such as lead and coal-tar derivatives used in paint. The evidence seems to indicate that the death rate from tuberculosis of women, who work in industry is greater than that of men. It is certainly clear from the studies of the Women's Bureau that since the War women workers have been exposed to many conditions causing occupational diseases.¹⁵ Apparently the laws protecting women workers are still inadequate.

Improving the conditions of women in industry. The United States Women's Bureau has worked out standards for working women which it believes are absolutely essential. These are as follows:

An eight-hour day is considered an absolute minimum, with at least a half-holiday on Saturday and one day's rest in seven. The noon hour should be at least thirty minutes long, but the ten-minute rest period in the forenoon and in the afternoon should not lengthen the day. The employment of women between midnight and 6 A.M. should be prohibited.

The wage rates should be based on occupations and not on sex or race. The minimum wage should cover the cost of healthful and decent living and allow for the care of dependents.

The standards are detailed in regard to working conditions. Besides the general statements calling for cleanliness, good lighting, ventilation, and heating, they specify machine guards, hand rails, safe flooring, devices for drawing off dust and fumes, fire protection, and first-aid equipment. Each woman worker should be provided with a chair and should be allowed to change her position so that she is not constantly standing or constantly sitting. Women should be prevented from overstraining themselves and should not be exposed to dust, fumes, poisons, and extremes of temperature. It goes

¹⁵ U. S. Women's Bureau, *Women in Industry*, 1931.

without saying that drinking and washing facilities should satisfy all sanitary conditions. The women workers should be provided with dressing rooms, restrooms, and lunchrooms. Adequate toilet facilities require at least one toilet to every fifteen workers.

A personnel department should be responsible for the selection, assignment, and transfer or discharge of employees. Women should occupy supervisory positions in the personnel department and elsewhere where women are employed. Workers should be allowed to share in controlling the conditions in which they work and should have an opportunity to select the occupations for which they are best fitted. Women should not be prohibited from entering any type of work unless its nature is such that it is more injurious to them than it is to men workers. Women should not be given work to be done at home. There should be the closest co-operation with the Federal and state agencies regulating the employment of women.¹⁶

How can the conditions of women in industry be improved? The employer may perhaps be educated to sense more of a responsibility towards his women employees. There are, of course, progressive employers who are willing to make voluntary changes, but the outlook does not hold much hope that the average executive will take the initiative in making changes to protect his women workers. Nevertheless, an aroused public opinion, educated to demand better conditions for women workers, can bring changes.

Of even greater promise is the organized labor movement itself. If women in industry can be effectively organized, then they can themselves raise their standard of pay, shorten their hours of labor, and improve the conditions under which they work.

One difficulty in organizing women is that they tend to work intermittently. Some hope to marry, others expect to stop work when their husbands secure better jobs. Consequently they are less willing than men to make the sacrifice which is necessary to join a union and pay dues. The experience of such strong unions as the Amalgamated Clothing Workers of America and the International Ladies' Garment Workers Union has proved that it is possible to organize women and girls into unions and greatly improve their conditions. The garment trades were among the worst sweated industries in the United States in 1910. Today they are among the best paid. The difference is partially due to their effective organization and to wise labor leadership.

Another means of improving the conditions of women in industry is through the state and federal government. Minimum wage laws and statutes covering night work and shortening the hours of labor for women are all valuable. It goes without saying that women should not be permitted to work in dangerous and unusually arduous occupations, and that adequate

¹⁶ U. S. Women's Bureau, 1931, p. 25.

laws should be enacted to insure safety and proper health conditions. In addition there should be adequate accident and health insurance, mothers' pensions, old-age pensions, and unemployment insurance. It seems probable that the time will come when married women in industry will be protected by receiving their wages for two months prior to, and following, childbirth.

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QUESTIONS

1. Discuss the difficulties of the Negro worker.
2. Should the convict be permitted to make goods for sale in competition with the rest of American labor?
3. Would the admission of European refugees into America affect adversely the American labor market? Why? Why not?
4. Why do most women go to work?
5. What was the difference in the proportion of women employed in 1910, 1920, and 1930? What is the significance of the trend?
6. Which occupations have shown the greatest increase?
7. How much lower are women's wages, on the average, than men's? How do you account for this?
8. Should or should not laws be enacted which especially protect women and place them in a class by themselves?
9. Cite any conditions in your home community which adversely affect women workers.
10. Discuss what you consider to be the best ways and means of improving the conditions of women in industry.

CHILD labor illustrates, perhaps better than any of the groups described in the preceding chapter, some of the issues which are involved in substandard labor. It was among the very first labor problems to receive the attention of legislatures both in the United States and abroad, and it has continued to be a sore point down to the present time. There is involved here not merely the danger to the adult which is always inherent in an increase in the labor supply but also, and this is undoubtedly more important, the danger to the children themselves arising out of the fact that they are exposed to modern industry prematurely. So significant has this latter been that it has tended to obscure the former, except with those employers who derived substantial economic benefits from the employment of children.

It does not hurt children to do some work—in fact a certain amount is beneficial to them—but long hours in a modern mass-production factory, or in gruelling agricultural labor, or under adverse circumstances or conditions, are harmful. Since we have roughly some fifty million children in the United States, over half of whom live in country districts, the problem is crucial.

There is no established definition of the precise age limits of child labor. Today it is more and more generally recognized that all working children under eighteen years of age can be so included. As technically used, child labor refers only to harmful toil. The Chairman of the National Child Labor Committee defines it as follows: “. . . any work by children that interferes

with their full physical development, their opportunities for a desirable minimum of education, or their needed recreation.”¹

EXTENT

Ever since the first settlement in America there has been a good deal of child labor. The census of 1870 recorded 739,000 children between the ages of ten and fifteen who were gainfully employed. This number steadily increased each decade, until a peak was reached in 1910, when there were almost 2,000,000 such children. By 1930 the number had dropped to 667,118. The following table tells the story:

TABLE 25
CHILDREN (10 TO 15 INCLUSIVE) GAINFULLY EMPLOYED

Year	Number	Percentage of Total Population (10-15 Years, Inclusive)
1900	1,750,176	18.2
1910	1,990,225	18.4
1920	1,060,858	8.5
1930	667,118	4.7

Source: U. S. census data.

The apparent decline is somewhat misleading, since in 1920 the census was taken on January first instead of on April first. This would eliminate most of the children working in agriculture, for such work does not begin as early as January. Furthermore, in 1930 we were already in the midst of a depression which had a tendency to reduce the number who were working.

Just what does the census of 1930 show? Let us consider the 667,000 children of from ten to fifteen years of age who were gainfully employed. Of these, 70 per cent were “unpaid family workers” or “wage workers” in agriculture. “Unpaid family workers” do not mean, as claimed by the National Association of Manufacturers, the child who “milks the cows, feeds the chickens, pitches hay, and does chores about the house.” Work on the farm which is supervised by parents and does not mean absence from school is, of course, advantageous to the child, and the census enumerators were *instructed not to include* such children. The census defines “gainful occupation” as “an occupation by which the person who pursues it earns money or a money equivalent. . . . The term ‘gainful worker’ does not include . . . children working at home, merely on general household work, on chores, or at odd times on other work.” According to the census, child labor in agriculture

¹ Homer Folks in an address in 1938.

means the following: children who are hired as wage workers; those who work as members of a family group and are not separately paid but are nevertheless employed by others, for instance in the sugar-beet fields, on berry farms, and on truck farms; and, finally, children who work full time on the farms which their parents cultivate.

The 1930 census showed some 200,000 other children at work. Seventy thousand were in manufacturing and mechanical industries, with approximately 21,000 in the textile mills, 9,000 in clothing, 6,000 in building and general labor, 5,000 in lumber and furniture, and 4,000 in food industries. The next largest number, about 50,000, were listed as in "trade." Domestic and personal service, *not in the child's own home*, claimed 46,000. Clerical occupations, such as messengers, errand boys, office boys and girls, took 17,000, while transportation and communication used 9,000 more.

Although, as we have mentioned, the census statistics showed a decline in the number of children at work, nevertheless from 1920 to 1930 this was not true of all states. In South Carolina, for instance, the number of children in the textile mills actually increased 23.7 per cent in this decade. Children in urban areas working at street trades throughout the United States also increased in this period. In Mississippi more than a fourth, and in Alabama almost a fifth, of all the children from ten to fifteen years of age were at work in 1930.

Because of the poverty of their parents, Negro children are forced into work to a greater extent than white children. In the Southern states especially, a large number of Negro boys from ten to fifteen are at work. For instance, about one-third of all Negro boys of this age in South Carolina were employed in 1930 as were two-fifths of the boys in Mississippi.

INADEQUACIES OF THE CENSUS DATA

We have already noted that the census is taken at one particular time in the year and so may not portray average conditions. The 1930 census went back again to April to collect its data, but even April is not a time when the most children would be employed in agriculture. The census of 1930 reported 2,051 children under sixteen at work in agriculture in Colorado, yet a single large beet-sugar company operating in just one section of Colorado estimated that there were *at least 6,000 children working in its section alone*. The census reported 706 children in agriculture in New Jersey; yet in the same year members of the State Migratory Child Survey Commission personally talked with 1,342 children from six to sixteen years of age working in agriculture.²

² Homer Folks, *Changes and Trends in Child Labor and Its Control*, National Child Labor Committee. New York. 1938.

The census, of course, cannot accurately list the children illegally employed. If state laws prohibit children from working, parents are likely to conceal the facts. How large this number is, we do not know, but it must be considerable.

In the third place, the census records only children over ten years of age, but there are large numbers working under that age. For instance, in New York in 1931 many newsboys were discovered to be at work illegally. Some of them were actually six years of age, and the average was only twelve.³

In the fourth place, the census does not count the large number of children engaged in industrial homework. As a matter of fact, wherever industrial homework exists child labor is to be found, for there is no practical way to prohibit it, and its long hours and frequent night work are highly injurious to the child. The New York Department of Labor in 1938 found a thirteen-year-old child working on artificial flowers. She worked seven days a week and nearly always until midnight. A single town in Maine of thirty-five hundred inhabitants was found to be doing homework for twenty-seven different New York and Philadelphia firms. How many thousands of children are engaged in similar work we do not know.

Still another group which the census does not cover adequately is the "street trader"—newsboys, bootblacks, and magazine vendors. The census listed nearly twenty-two thousand newsboys between ten and fifteen, but in 1934 the newspaper industry itself reported over a quarter of a million children under sixteen who were peddling papers. Since these children usually do not come under the workmen's compensation laws, if they are injured in a street accident they may get nothing.

Considering all these factors, Mr. Homer Folks of the National Child Labor Committee estimates that there were at least a million children under sixteen gainfully employed in 1930. He summarizes the extent of child labor since 1932 as follows:

First, there has been a rapid and alarming increase in industrial child labor since the N.R.A. was declared unconstitutional, though it has probably not reached pre-N.R.A. proportions in most states.

Second, there has been a gradual occupational shift of working children from manufacturing occupations to those in the personal service fields which in many cases are less subject to state regulation.

Third, there is no indication that the number of children engaged in industrial agriculture, which was greatly understated in the census figures of 1930, has decreased except in the sugar-beet fields where federal standards affecting the children of contract laborers are now operative through the Jones Sugar Act of 1937.

Fourth, there is no indication that the employment of children in street trades, which was also largely unreported by the census, has diminished.

Finally, on the basis of these facts, figures, and defined trends and using the

³ *Child Labor Facts and Figures*, U. S. Children's Bureau. Washington, D. C. 1933. P. 29.

census definition of gainful employment, we can conservatively estimate, I believe, that the *total number of children under sixteen years gainfully employed today is approximately 850,000*. . . . In addition there are over a million boys and girls of sixteen and seventeen years gainfully employed, *nearly one in every three of this age group*.⁴

CAUSES OF CHILD LABOR

Probably the chief causes of child labor are the poverty of families and the desire for cheap labor by factories, mills, and farms. Under the spur of the quest for quick and easy profits, no cheap labor supply will be overlooked.

The most important cause, then, of child labor is the widespread poverty and insecurity of the American family. The responsibility for this situation, in turn, lies with our economic order, which does not provide stability and a living wage to all. This verdict is confirmed in the White House Conference on Child Health and Protection, which in 1931 declared: "Child labor is in large measure a question of poverty."⁵ Probably one-third of all child workers come from homes below the poverty line,⁶ where the parents are usually earning what has been termed a "dying wage." In addition to this, whenever depression strikes, many more million children are added to those who must seek work. Illness, accident, or death may strike down one or more of the parents. Lumpkin and Douglas, in a study made in 1931-32, found that "these conditions were a factor in sending no less than 30 per cent of Massachusetts and Alabama boys and girls to work."⁷ If we add the number of boys and girls forced to work because for years their homes have been on the edge of poverty, the number rises in these states to almost 50 per cent. Even when widows' pensions or accident compensation are given, the amount is usually too small to provide sufficient means for the family without the child's adding his mite through a job.

During a depression the wage earner may experience prolonged unemployment, drastic wage cuts, part-time work, or he may be forced into a new type of work at a lowered pay. Any one of these factors may cause the children in such a family to seek work. Indeed, Lumpkin and Douglas show that in two-fifths of the cases whenever a boy or girl first started to secure a job, either one or more of the family wage earners were unemployed. In about two-thirds of the cases both unemployment and part-time work were found. In almost one-third the father had had one or more serious pay cuts before the child went to work.⁸ Less than half of the fathers were then earning \$15 a week or more. When many families frequently do not have

⁴ Folks, *op. cit.*, p. 16.

⁵ White House Conference on Child Health and Protection, III D, *Child Labor*. D. Appleton-Century Company. New York. 1932.

⁶ Katherine D. Lumpkin and Dorothy W. Douglas, *Child Workers in America*. Robert M. McBride. New York. 1938. P. 162.

⁷ *Ibid.*, p. 169.

⁸ *Ibid.*, p. 7.

even enough to eat in a depression, it is no wonder that children feel an urge to go to work. Even if workers save in periods of prosperity, their accumulations are quickly swept away. Depression and times of adversity thus result in severe hardships both for the family and for the children.

Besides the compulsion of poverty within the family, is the stimulus of the manufacturer who desires to secure cheap labor and more profits. Child labor exists not because children are more able workers but because they can be had for less money. Children are employed by small concerns and large corporations.

It is sometimes argued that most child workers are subnormal and that it is a good thing to put them to work in factories and mills. It is true that there is some evidence to indicate that, on the average, children who go to work in factories have had less satisfactory grades in school than the children who do not. Nevertheless, this is not as significant as might be supposed, for the children who work come largely from the poorer working-class homes, where the child is subjected to crowding, poor food, disease, and finds little in his environment to stimulate intellectual development. His home contains few suitable magazines or books, and his parents, broken by years of hopeless struggle, are not likely to inspire the child to try to improve himself culturally. In Newark and Paterson, New Jersey, where the schools are exceptionally good, the Children's Bureau found in 1930 that children of superior intelligence were as likely to go to work as to stay in school.⁹

Psychological studies indicate that the slightly higher grades of the children who do not go to work may be ascribed largely to their environment. In fact, a study of children from privileged and underprivileged homes in Illinois concluded that the real difference was solely one of language, and that in certain nonverbal tests the underprivileged were actually superior.¹⁰

It is also sometimes said that children enter factory work of their own volition. While this is sometimes true, scientific studies show that it is true for only an extremely small percentage.¹¹ In point of fact, social and environmental forces, rather than individual motivations, are responsible for most of the child labor in the United States. Any nation which really desires to rid itself of child labor can largely do so.

WAGES

Child wages are notoriously low. In 1928, a boom year, in cotton goods and hosiery in Tennessee, for instance, boys received only \$5.20 on the average and girls \$6.05 per week. In the five-and-ten-cent stores at that time the

⁹ U. S. Children's Bureau. Bulletin 199. Government Printing Office. Washington, D. C. 1931. Pp. 12, 51.

¹⁰ Ethel Kavin, *Children of Preschool Age*. University of Chicago Press. Chicago. 1934.

¹¹ Lumpkin and Douglas, *op. cit.*, p. 141.

average wage for girls was only \$5.00.¹² Lumpkin and Douglas found in their study (1931-32) that "nearly a third of our young workers in Massachusetts and Alabama earned the meager sum of from \$2.00 to \$6.00 a week on their first jobs. The boys averaged around \$7.00 in Alabama, and around \$8.50 in Massachusetts. The girls averaged a dollar less. We found instances of children earning \$2.00, \$3.00, and \$4.00 a week for sixty hours of spinning, delivery work, or other tasks."¹³

In homework the long hours of child labor reaches its extreme limits. Lumpkin and Douglas found a number of fourteen-year-old children working about seventy-two hours a week at housework. But industrial homework is even worse. Here, in poverty-stricken homes, children slave until midnight or after, making artificial flowers, sewing buttons on cards, sewing suits, and doing hundreds of other tasks, at a remuneration of only a few cents an hour. Still worse are the sweatshops which suddenly move out of a state, leaving the workers several weeks behind on wages. One such small Pennsylvania factory which moved to New York owed its workers \$6,000. The report made by the Sub-Committee on Child Labor of the White House Conference in 1930 revealed very low wages for child labor in the tobacco fields of Kentucky. Averages ranged from 50 cents a day in South Carolina to \$2.00 in Connecticut. For general farming the daily wage of children was \$1.50 in Illinois and \$2.00 in North Dakota.

HOURS

Many of the states have laws limiting child labor, but even so a study made by the Children's Bureau in the rural areas of thirteen states found over 37 per cent of the children toiling ten hours or more.¹⁴ Even where there are child labor laws, they are sometimes not enforced. Lumpkin and Douglas found that, although Massachusetts and Alabama both had the eight-hour law for children, this did not mean that children did not work longer hours. In fact, in Massachusetts apparently some 7 per cent of the children were working fifty hours or more, and in Alabama nearly 50 per cent were so employed, many being employed from sixty to seventy hours and a few eighty hours a week.¹⁵ It is well known that messenger boys and children in stores also have long hours. For instance, Lumpkin and Douglas cite the case of a child working in a grocery store eighty hours a week at a salary of only \$4.00.¹⁶

¹² M. A. Elliott, "Child Labor as a Family Problem," *Sociology and Social Research*, Vol. XVIII (Jan.-Feb., 1934), 251-57.

¹³ Lumpkin and Douglas, *op. cit.*, p. 39.

¹⁴ U. S. Children's Bureau. Bulletin 187. Government Printing Office. Washington, D. C. 1929.

¹⁵ Lumpkin and Douglas, *op. cit.*, p. 36.

¹⁶ *Ibid.*, p. 37.

WORKING CONDITIONS

Even unexploited child labor may be under working conditions injurious to the welfare of children. The average conditions are, of course, very much worse. In industry the child is often subjected to monotony, high speed, severe strain, and undue fatigue. In agriculture housing conditions are likely to be bad; often there is poor ventilation, overcrowding, sometimes bad sex conditions. The study made for the White House Conference found poor ventilation in half the industrial concerns where there was too much dust, dirt, and fumes.¹⁷ Children do not have the resistance of adults, succumbing quickly to tuberculosis and to industrial poisons.

In regard to accidents, children are more careless and therefore more likely to be hurt. In fact, the National Child Labor Committee maintains that children under sixteen are three times as liable to accidents as are adults. We do not know how many children are injured through accidents because most of the states do not classify accidents by age groups. Among the sixteen states that do, we find that accidents are likely to be fatal twice as often among children under sixteen as for those who are older. It is not strange that the Metropolitan Life Insurance Company says: "One of the most serious indictments of child labor is the heavy accident toll paid by young wage earners. In spite of safety devices and safety campaigns, a high rate of injuries is sustained by boys and girls in our mines and factories."¹⁸ Many children who are hurt are being employed illegally. The President's Conference reported that actually 67 per cent of all the children who were injured in Illinois were illegally employed; in New York the number was 13 per cent.¹⁹

Even when children are "covered" by accident compensation laws, the amount they secure is woefully inadequate to meet their needs. Usually it is not much more than 50 per cent of their weekly wages. Since the pay of children is pitifully small, accident compensation is often almost negligible. Actually, a strong case can be made that a child disabled for life should receive a higher compensation than an adult, for his loss is greater.

We do not have adequate statistics as to the incidence of disease among child workers, but it seems reasonable to suppose that child labor retards growth and weakens resistance. Furthermore, when a child works in a modern factory during adolescence a decided strain is placed on his physical and nervous system which may be harmful.

¹⁷ White House Conference on Child Health and Protection, Sub-Committee on Child Labor, 1932.

¹⁸ Metropolitan Life Insurance Company, *Statistical Bulletin*, March, 1922.

¹⁹ White House Conference, Sub-Committee on Child Labor, *op. cit.*, pp. 383-97.

UNEMPLOYMENT AND THE COSTS OF CHILD LABOR

It has definitely been established that there is more unemployment among child workers than among adults. Girl workers have about twice the ratio of unemployment that the boys have.²⁰ The census for 1930 showed that 10.5 per cent of child workers under fifteen were unemployed, while for those fifteen and over the percentage was only 6.2.

Although child labor can be secured for a low wage, it does not necessarily mean that in the long run it is genuinely economical for the employer, for in most occupations it costs something to break in a new worker. If employed children have a quick turnover—do not stay long in one employment—costs may run up much more quickly than the employer realizes. This is, of course, not so true for seasonal and irregular work. In spite of inefficiency, rapid turnover, and poor quality of work, child labor, however, often gives an illusion of being highly profitable. Yet it is not unlikely that if it were abolished entirely, employers might find that they could produce just as economically without it.

PROS AND CONS OF CHILD LABOR

Those who favor child labor profess to believe that children who go to work at an early age are taught habits of industry which stand them in good stead later in life. Many an outstanding businessman recalls with pride that he went to work when he was only eight or ten years old, that he learned the value of money at that time, and that this early start was largely responsible for his success. On the other side of the ledger, however, are these entries: children who go to work are unable to get an adequate amount of schooling; they are deprived of the time and opportunity for play; and they are often exposed to serious health hazards which might not harm older people. It is not difficult, moreover, to conceive the moral dangers which beset boys engaged in street trades, such as peddling newspapers, which often require their staying out on the streets until quite late at night, where they are in the company of questionable characters and fall easily into the habit of frequenting undesirable establishments.

The advantages expected from the abolition of child labor may be suggested by the names of some of the following organizations which have urged the ratification of the Child Labor Amendment:

American Association of Social Workers
American Association of University Women
American Farm Bureau Federation

²⁰ White House Conference, Sub-Committee on Child Labor, *op. cit.*, p. 26.

American Federation of Labor
 American Home Economics Association
 American Legion
 American Nurses' Association
 American Unitarian Association
 Association for Childhood Education
 Camp Fire Girls
 Central Conference of American Rabbis
 Council of Women for Home Missions
 Federal Council of the Churches of Christ in America
 Fraternal Order of Eagles
 General Federation of Women's Clubs
 Girls' Friendly Society of America
 Methodist Board of Home Missions and Church Extension
 National Federation of Business and Professional Women's Clubs
 National Child Labor Committee
 National Congress of Parents and Teachers
 National Consumers' League
 National Council of Jewish Women
 National Education Association
 National Federation of Settlements
 National Federation of Temple Sisterhoods
 National League of Women Voters
 National Woman's Christian Temperance Union
 National Women's Trade Union League
 Northern Baptist Convention
 Presbyterian Church in the U.S.A.
 The Railroad Brotherhoods
 Reformed Church in America
 Women's General Missionary Society of the United Presbyterian Church
 Young Women's Christian Association

More eloquent than arguments of supporters, however, is the testimony of one whose legal objections to being debarred from work caused the United States Supreme Court, by a four-to-five decision, to hold the first federal Child Labor Law of 1916 unconstitutional.

Reuben Dagenhart of Charlotte, North Carolina, a fourteen-year-old boy working twelve hours a day in a cotton mill, legally objected to working only eight hours a day as required by the federal law. His case was taken to the courts and appealed up to the Supreme Court, which decided by a majority of one vote in his favor.

Later, when Dagenhart had become a young man of twenty, a newspaper reporter asked him: "What benefit did you get out of the suit which you won in the United States Supreme Court?"

This was his answer: "You mean the suit the Fidelity Manufacturing Company won? [The boy had been working for this concern and in reality it was the company which was behind the suit.] I don't see that I got any

benefit. I guess I'd have been a lot better off if they hadn't won it. Look at me! A hundred and five pounds, a grown man and no education. I may be mistaken, but I think the years I've put in the cotton mills stunted my growth. They kept me from getting any schooling. I had to stop school after the third grade and now I need the education I didn't get. . . . Of course they do better now than they used to. You don't see many babies working in the factories, but you see a lot of them that ought to be going to school. . . . But I know one thing. I ain't going to let them put my kid sister in the mill." ²¹

STANDARDS FOR CHILD LABOR

The National Child Labor Committee, which has given careful consideration to the legal requirements for the regulation of child labor, has proposed the following minimum standards:

IN NONAGRICULTURAL OCCUPATIONS

Minimum Age. No child under 16 years should be employed except that children 14 to 16 years may work outside of school hours in light occupations. School attendance should be compulsory for the entire term for a child under 16 years unless he has completed the course of study available, and the school term should not be less than 9 months.

Limitation of Hours and Night Work. [Hours should be limited to the utmost extent practicable and night work abolished.]

Work Permits. No person under 18 years should be employed without a work permit based upon proof of age, employer's promise of work and a certificate of physical fitness with provision for subsequent physical examinations.

Dangerous Occupations. No person under 18 years should be employed in dangerous or injurious occupations.'

Workmen's Compensation. Adult earning capacity should be considered as the basis on which wages are computed under the workmen's compensation laws for a minor permanently disabled; at least double compensation should be assessed against the employer of a minor who is injured while illegally employed.

IN AGRICULTURE

School Attendance. No child should be employed during the hours when compulsory attendance laws require his attendance at school. School attendance should be compulsory for the entire term for a child under 16 years unless he has completed the course of study available, and the school term should not be less than 9 months.

Minimum Age. No child under 14 years should be employed at any time away from the home farm, except that children 12 years and over may engage with their parents in light tasks for a few hours a day during a short season.

Hours of Work. No child under 16 years should be employed away from the

²¹ National Child Labor Committee, *Handbook on the Federal Child Labor Amendment*. New York. 1937. P. 60.

home farm for more than 8 hours in a single day; the combined hours for school attendance and such employment should not exceed 8 hours in a single day.

Dangerous Work. No person under 18 years should be employed in dangerous or injurious agricultural work; and minors employed in agriculture should be included in the workmen's compensation laws.²²

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QUESTIONS

1. What is the extent of child labor in the United States? Which occupations have the most?
2. What child labor do you have in your home state? Your home community?
3. What limitations have the data of the United States census on child labor?
4. What are the causes of child labor?
5. Can you find out concretely what the wages, hours, and working conditions in your home community are for child labor?
6. In the list of organizations favoring the Child Labor Amendment, are there any run primarily for private profit? If not, why not? How do you account for the opposition of so many eminent college presidents?
7. What do you think should be the provisions of a model law?
8. How could you get a model law adopted in your own state?

²² National Child Labor Committee, "Child Labor Facts." New York. 1933. Pp. 27-28. These have been brought down to 1939 through correspondence with the National Child Labor Committee.

9

INDUSTRIAL

DISPUTES



PRECEDING chapters have dealt with various phases of the life of the worker in modern economic society. Faced with the problems of low and inadequate wages, long working hours, bad working conditions, and insecurity, many workers have joined unions whose major function it is to bargain with the employer as to the conditions of employment. The union thus acts as the representative at least of its own members and possibly of all the workers in a given plant or industry. Detailed discussions of union organization and government are contained in later chapters; here our purpose is to discuss the weapons of unions in the conflict with employers.

With virtually no exceptions, unions desire to come to terms with employers peacefully. They desire to negotiate with the employers concerning wages, hours, and the like, and reach an agreement around the conference table. But if employers refuse to negotiate, or negotiation does not yield a proposal satisfactory to both sides, and either side or both refuse to submit the difficulties to arbitration, the result may be a strike.

STRIKES AND LOCKOUTS

The Bureau of Labor Statistics defines strikes and lockouts thus: "A strike is a temporary stoppage of work by a group of employees in order to express a grievance or to enforce a demand; a lockout is a temporary

withholding of work from a group of employees by an employer (or a group of employers) in order to coerce them into accepting the employer's terms."¹

Both strikes and lockouts, then, involve stoppage of work; in the former, the initiative is taken by the workers; in the latter, by the employers. In practice, it is often difficult to distinguish between strikes and lockouts: that is, to attribute a given stoppage of work either to employers or to employees. Quite commonly, strikes and lockouts may be found in the same industrial dispute. Thus, workers who have been "locked out" may declare a strike, or an employer may anticipate a strike by shutting down the entire plant just before the strike is to begin, or he may declare a lockout after his workers have struck. The difficulty of distinguishing between strikes and lockouts has been recognized by the Bureau of Labor Statistics. Prior to 1922 the Bureau presented separate figures for strikes and lockouts, but since that time the two have been combined. Since 1935, the Bureau has used the term "strike" to include stoppages attributable to lockouts.²

A suspension of work may be thought of as a businesslike failure to agree on the terms of the labor contract for which both sides are responsible. However, it almost always appears in the shape of a strike. It is the union which carries on public demonstrations in the form of picket lines. Its name is prominently mentioned in connection with whatever violence occurs, even though it protests that most of it was begun by the other side or was a "frame-up." But it should be kept in mind that strikes may be defensive as well as offensive. Just as a union may strike for higher wages or shorter hours or better working conditions, so it may strike against an attempt by the employer to reduce wages, increase the hours of work, or introduce poorer working conditions. The reputation which unions have of being quarrelsome is based largely on the misconception that it is always the union which is the aggressor.

STRIKE STATISTICS

Table 26 gives the available statistics on the fluctuations of total strikes in the United States. Few data were collected before 1881, and we know that relative to later years unions and strikes were few. Peaks of strikes can be seen clearly in 1886 (a year of business revival), 1894 (depression and revival), 1903 (peak and recession), 1907 (peak and depression), 1919 (recession and renewed boom), and 1937 (boom and depression).

Roughly three-quarters of the strikes in the United States take place in the industrial area to the north of the Ohio River and to the east of the

¹ Florence Peterson, *Strikes in the United States, 1880-1936*. Bulletin 651. Bureau of Labor Statistics. Government Printing Office. Washington, D. C. 1938. P. 3.

² *Ibid.* For the period 1881-1905, lockouts accounted for 4 per cent of all suspensions of work and involved 10 per cent of all employees immediately affected.

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Mississippi. The eight states of New York, Pennsylvania, New Jersey, Michigan, Ohio, Massachusetts, Illinois, and California were responsible for over two-thirds of all the strikes. About half occur in New York, New Jersey, Massachusetts, and Pennsylvania alone. Yet these four states have less than 35 per cent of the wage earners of the country. The United States Bureau of Labor Statistics has also shown that our large industrial cities have more than their proportion of strikes.

TABLE 26
NUMBER OF STRIKES AND WORKERS INVOLVED, 1881-1939

YEAR	NUMBER OF STRIKES	NUMBER OF WORKERS INVOLVED	INDEX (1927-29 = 100)		MAN DAYS* IDLE
			Strikes	Workers	
1881	477	130,176	64	42	—
1882	476	158,802	64	51	—
1883	506	170,275	68	55	—
1884	485	165,175	65	53	—
1885	695	258,129	93	83	—
Total for 5 years..	2,639	882,557			
1886	1,572	610,024	211	196	—
1887	1,503	439,306	202	141	—
1888	946	162,880	127	52	—
1889	1,111	260,290	149	84	—
1890	1,897	373,499	255	120	—
Total for 5 years..	7,029	1,845,999			
1891	1,786	329,953	240	106	—
1892	1,359	238,685	183	77	—
1893	1,375	287,756	185	93	—
1894	1,404	690,044	189	222	—
1895	1,255	407,188	169	131	—
Total for 5 years..	7,179	1,953,626			
1896	1,066	248,838	143	80	—
1897	1,110	416,154	149	134	—
1898	1,098	263,219	148	85	—
1899	1,838	431,889	247	139	—
1900	1,839	567,719	247	182	—
Total for 5 years..	6,951	1,927,819			
1901	3,012	563,843	405	181	—
1902	3,240	691,507	435	222	—
1903	3,648	787,834	490	253	—
1904	2,419	573,815	325	184	—
1905	2,186	302,434	294	97	—
Total for 5 years..	14,505	2,719,433			

* No information available before 1927.

TABLE 26 (Continued)

YEAR	NUMBER OF STRIKES	NUMBER OF WORKERS INVOLVED	INDEX (1927-29 = 100)		MAN DAYS IDLE
			Strikes	Workers	
1906	3,655	383,000	491	123	—
1907	3,724	502,000	501	161	—
1908	1,957	209,000	263	67	—
1909	2,425	452,000	326	145	—
1910	<u>3,334</u>	<u>824,000</u>	448	265	—
Total for 5 years..	15,095	2,370,000			
1911	2,565	373,000	345	120	—
1912	3,053	972,000	410	313	—
1913	3,574	997,000	480	321	—
1914	2,736	627,000	368	202	—
1915	<u>3,617</u>	<u>907,000</u>	486	292	—
Total for 5 years..	15,545	3,876,000			
1916†	3,789	1,599,917	509	514	—
1917	4,450	1,227,254	598	495	—
1918	3,353	1,239,989	451	399	—
1919	3,630	4,160,348	488	1,337	—
1920	<u>3,411</u>	<u>1,463,054</u>	458	470	—
Total for 5 years..	18,633	9,690,364			
1921	2,385	1,099,247	321	353	—
1922	1,112	1,612,562	149	517	—
1923	1,553	756,584	209	243	—
1924	1,249	654,641	168	210	—
1925	<u>1,301</u>	<u>428,416</u>	175	139	—
Total for 5 years..	7,600	4,551,450			
1926	1,035	329,592	139	106	—
1927	707	329,939	95	106	26,219,000
1928	604	314,210	81	101	12,632,000
1929	921	288,572	124	93	5,352,000
1930	<u>637</u>	<u>182,975</u>	86	59	3,317,000
Total for 5 years..	3,903	1,445,288			
1931	810	341,817	109	110	6,893,000
1932	841	324,210	113	104	10,502,000
1933	1,695	1,168,272	228	376	16,872,000
1934	1,856	1,466,695	250	472	19,592,000
1935	<u>2,014</u>	<u>1,117,213</u>	271	359	15,456,000
Total for 5 years..	7,216	4,418,207			
1936	2,172	789,000	292	254	13,902,000
1937	4,740	1,861,000	637	598	28,425,000
1938	2,772	688,000	373	221	9,148,000
1939	2,500‡	1,200,000‡	350‡	385‡	18,000,000‡

† The number of workers involved in strikes between 1916 and 1926 is known for only a portion of the total. However, the missing information is for the smaller disputes. It is believed that the total here given is fairly accurate.

‡ Preliminary.

Sources: As to 1881-1905, United States Bureau of Labor. As to 1906-1915, John I. Griffin, *Strikes: A Study in Quantitative Economics*. Columbia University Press. New York. 1939. Pp. 38, 43-44. His estimates are based on data from seven states. As to 1916-1939, United States Bureau of Labor Statistics.

The importance of strikes as among the different industries is indicated for 1937 by the following chart.

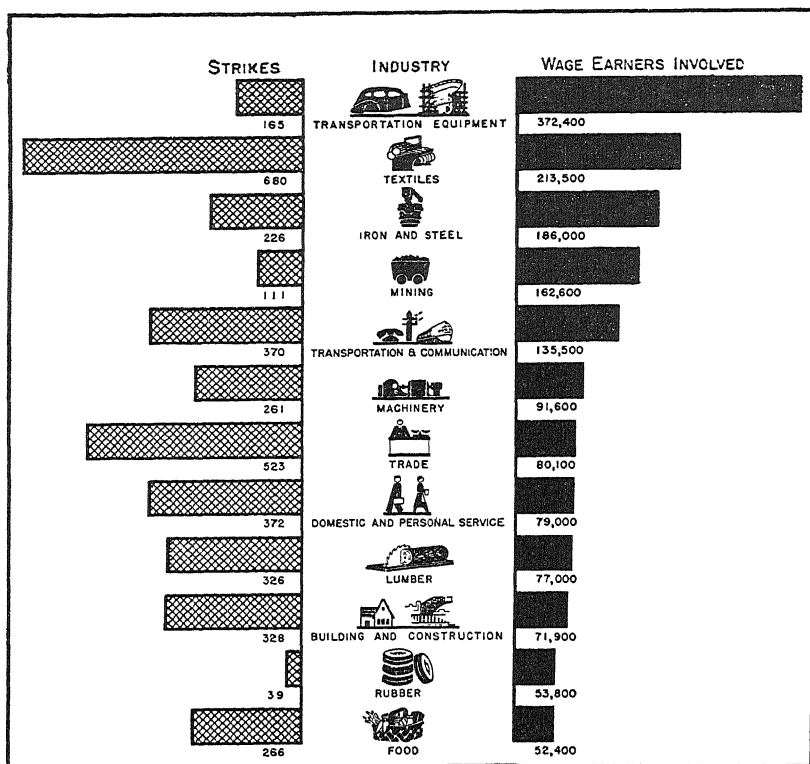


CHART 5.—Industry Groups Most Affected by Strikes in 1937

Chart by Don Q. Crowther of U. S. Bureau of Labor Statistics.

Fluctuations in number of strikes. Certain general observations should be made about fluctuations in the number of strikes from one period to another. First, the number of strikes may be said to depend in part upon the stage of the business cycle. During periods of recovery and during periods of recession, there are likely to be many strikes. In the former, mounting living costs create pressure on workers to demand wage increases, there are more job opportunities and the worker is no longer so completely dependent upon the particular employer, and greater employment gives unions added strength and an impetus to spread their organization. During periods of recession, employers take the offensive by demanding wage cuts and other concessions and, although job opportunities are decreasing, the unions decide not to yield to the employer without a struggle. During periods of de-

pression, on the other hand, there will ordinarily be few strikes; there are few enough jobs as it is, and the fortunate jobholder is not likely to imperil his job by going on strike. Moreover, unions are weak, have lost largely in membership, and have neither the will nor the resources to engage in what is almost certain to be a lost cause. During periods of prosperity labor is likely to be well organized and able to finance a strike; employment opportunities are so much greater that less is at stake as far as the workers are concerned. There is consequently a tendency toward increase in the number of strikes during prosperity. On the other hand, if business is so good and profits are so large that employers would rather make concessions to workers than risk a stoppage, the tendency to strike may be overcome. Strikes in some depression years have exceeded strikes in some booms. "For instance, in 1894 there were more persons involved in strikes than in the relatively prosperous years preceding the depression of the 1890's. During the 1927-29 period there were fewer strikes than during the depression of 1920-21, or even the prolonged depression of 1893-9."³

A second factor affecting the number of strikes is the occurrence of some particular phenomenon like the World War or the passage of the N.I.R.A. Events of this sort may stimulate labor disputes either by sharply stimulating labor organization, or by creating improved business conditions, or by placing labor in a better strategic position, as in the World War when millions were called to the colors.

The extent of union organization is a third factor to be considered. Contrary to common belief, not all strikes are called by unions; a great many are at least begun by unorganized workers. Still, the existence of a union organization in a given instance furnishes a nucleus for organized action. It is much easier for a union to call a strike than for unorganized workers to do so; the leadership, the experience, and the funds are more likely to be available. It should not be thought, however, that unionism necessarily makes for industrial disputes. Indeed, where powerful unions have been long established in an industry, as in the printing trades, quite the contrary is usually the case. Codes of industrial law are likely to be developed, and differences of opinion between union and employer are likely to be settled by negotiation and arbitration rather than by resort to strike. If, therefore, unionism continues to spread, and unions become a firm fixture in our various industries, we may expect a stabilization in industrial relations and a reduction in the number of strikes.

The philosophy of the leaders of labor will also affect the number of strikes. From time to time, a group emerges from the ranks of labor which views the strike as an essential weapon not merely to secure immediate

³ Peterson, *op. cit.*, p. 21.

concessions from employers but also to contribute to the overthrow of the economic system. Such groups will use the strike as a regular tactic.

Another contributing factor is the attitude of government. Harsh, repressive measures used against strikers or propaganda devices calculated to make strikers appear traitors may well inhibit the tendency to strike. On the other hand, the presence of a government sympathetic to unionism may encourage workers to organize and to strike.

In a statement presented to the Senate Committee on Education and Labor in the middle of 1939, the National Labor Relations Board claimed that it had been instrumental in causing a considerable reduction in the number of strikes. Without passing on this claim here, it may be said that the existence of an agency such as the N.L.R.B. might well serve the claimed purpose. At the very least, the Board, and the Act under which it was created, ought to go a long way toward eliminating completely those strikes which would otherwise be called for organizational purposes.

Finally, a comprehensive system of governmentally sponsored conciliation, mediation, and arbitration is likely to reduce the frequency of strikes. Not all disputes will be eliminated, of course, since there are many issues on which either the employer or the union will refuse to arbitrate, but all those may be eliminated which are susceptible of compromise settlement.

THE STRIKE AS A MEASURE OF INDUSTRIAL UNREST

From what we have said above, it may be inferred that while the strike is a useful indicator of discontent, it is by no means definitive. For, in many cases of great unrest the strike may not be a feasible weapon. Business may be bad and unemployment great, the employer may be powerful and ruthless, the government opposed, and the workers disorganized. As Commissioner Lubin has observed: "In general, strike statistics measure such unrest as prevails under circumstances that lead workers to hope that they may better their conditions or mitigate a worsening of conditions through strike action. For example, they tend to be used more sparingly when large numbers of unemployed stand in the streets as competitors for jobs. A public opinion or government hostile or indifferent to the claims of labor may decrease the number of strikes while actually increasing the basic unrest."⁴

Moreover the number of strikes occurring in a given year is less valuable as an indicator of unrest than the number of men involved, or the duration of the strike. Obviously, three thousand strikes involving ten men on the average for about five days on the average is less serious than one strike involving half a million men for five months. Yet, such data should be handled cautiously; the fact, for example, that in a given year millions were

⁴ Peterson, *op. cit.*, p. v.

involved in a labor dispute does not, of itself, signify that that year was one of widespread industrial unrest. Instead, the large total may be purely an accident caused, for instance, by the termination of an important trade agreement in a particular year. Thus, the termination of the coal agreements in the spring of 1939 was directly responsible for the very large number of strikers in the coal industry in that year.

Much importance must also be attached to the questions of which industries are most affected by strikes. A strike in coal or steel or transportation is much more serious for the public at large than a strike in the straw-hat industry. A few big strikes in strategic industries may easily paralyze our economic system, while thousands of strikes in the nonessential industries would do little more than cause inconvenience and annoyance.

CAUSES

In a society made up of varying class interests, we have different conceptions of justice and liberty. Employers usually feel that they have the right to hire and fire at will in order to maintain maximum efficiency. The workers feel that the employer's right to discharge should be carefully circumscribed and that they should have a real voice concerning the conditions under which they work. Conflict inevitably arises between the employers' and the employees' points of view. A strike may arise from any grievance, real or fancied, which the workers feel should be righted. But labor recognizes the strike as a weapon of last resort after all other means of settling a disagreement have failed.

Strikes may be called for a great variety of reasons as the following classification used by the Bureau of Labor Statistics indicates:

Wages and hours

- Wage increase

- Wage decrease

- Wage increase—hour decrease

- Hour decrease

- Hour increase

- Wages, hours, and other

Organization

- Recognition

- Recognition and wages

- Recognition and hours

- Recognition, wages, and hours

- Closed shop

- Discrimination in employment and discharge

Miscellaneous
 General conditions
 Jurisdiction
 Sympathy
 Other

The major issue in a strike is often difficult to determine. There may be several leading issues. Furthermore, a strike for higher wages or for shorter hours may be merely the expression of great discontent with conditions of work or the attitudes of employers and foremen. Data on the causes of strikes,

TABLE 27
 MAJOR ISSUES INVOLVED IN STRIKES ENDING 1927-38

Year	Wages and Hours	Union Organization	Miscellaneous	Total
1927	273	240	153	666
1928	222	226	172	620
1929	373	382	169	924
1930	284	207	160	651
1931	447	221	128	796
1932	560	162	130	852
1933	926	533	213	1,672
1934	717	835	265	1,817
1935	760	945	298	2,003
1936	756	1,083	317	2,156
1937	1,417	2,740	583	4,740
1938	776	1,385	611	2,772
1939	700*	1,300*	500*	2,500*

* Preliminary

Source: For years through 1936, Peterson, *op. cit.*, p. 61; for 1937, *Monthly Labor Review*, May, 1938; for 1938, *Analysis of Strikes in 1938*. Government Printing Office. Washington, D. C. 1939. P. 12.

then, of necessity reflect the judgment of observers of the strike as to what the principal issue is. With this in mind, we may note that over an extended period wages and hours appear to be clearly in the lead, but that there appear to be vagues in the causes for strikes. For the period from 1881 to 1905, 54 per cent of all strikes involved wages and hours as major issues; in 24.3 per cent of the strikes, recognition was the major issue; 21.7 per cent were called for miscellaneous reasons, such as sympathy strikes.⁵ From 1914 to 1926, the Bureau of Labor Statistics recorded 30,065 strikes, of which over half (15,777) were chiefly wages and hours strikes, while 5,718 chiefly concerned recognition.⁶

The same general relationship among the major issues continued through

⁵ Peterson, *op. cit.*, p. 33.

⁶ *Ibid.*, p. 39.

1932. With 1933, however, there came a great change, as can be seen from the table on page 132. The N.R.A., as we have already observed, stimulated the organization of labor and, in the following years, organization and recognition strikes became increasingly important; for 1938, for example, organization strikes accounted for over half the total, while wages and hours strikes fell to 28 per cent.

Of the miscellaneous causes for strikes, increasing attention will have to be paid to rivalry between unions. This is distinct from jurisdictional disputes between unions, as in the building trades, over which of the building trades unions is to have control over a given type of work. Rivalry between unions, as used here, refers to dual unionism—two rival unions in the same field—as in the case of two unions of electricians, or clothing workers, or miners, for example. The split between the American Federation of Labor and the Congress of Industrial Organizations has caused rival unions to be set up in various fields, such as mining and automobiles. Thus A.F.L. unions may call strikes against plants having agreements with C.I.O. unions and vice versa.

KINDS OF STRIKES

With one exception all the purposes described in the preceding section involved direct benefit to the strikers. The exception is the *sympathetic strike*, the immediate purpose of which is to benefit some other group of workers. Any benefits derived by the sympathetic strikers, such as the establishment of a powerful labor movement or the promise of reciprocation in the future, will be indirect.

Sympathy strikes are of the greatest assistance when conducted by people in the same or allied industries. If the other building trades declare a strike in order to help striking bricklayers, or if the other printing trades declare a strike to help the striking compositors, or if the truckmen declare a strike to help the striking longshoremen, the effect is to tie up the industry as a whole and to exert much greater pressure on the employer to effect a peaceful settlement. When conducted by workers in nonrelated fields, sympathetic strikes are likely to have merely a moral value, for the essence of successful striking is the exertion of great economic pressure on the employer. Hence if the garment workers strike in sympathy with the miners, the benefit to the latter is slight.

Extended to the logical limit, the sympathy strike becomes a *general strike*: a strike of *all* workers in a given community. A general strike may be called to help a particular group of workers or unions, as in the British general strike of 1926, and it may also be called for a broader purpose, for example, to demand the passage of favorable labor legislation.

If a strike is really general, it paralyzes the whole life of the community:

police, fire, water, and other governmental services would be suspended, electric light and gas would be discontinued, all workers would lay down their tools, and all sources of food supply would be cut off. But a strike need not extend this far in order to cause great inconvenience to the community. If essential services like heat, water, light, and power are discontinued or curtailed, and if most shops are closed, the life of the community is disrupted. This suggests, of course, that the general strike is a weapon which because of its very power must be handled with great caution. When it is used, the community as a whole immediately suffers hardship. This turns public opinion against the strikers, making it easier for employers to secure the aid of the militia or the regular troops, and, ultimately, to obtain the passage of anti-union legislation. There is a good deal in the argument that the general strike is fundamentally a political strike, and that it has no place in the labor armory except when a change in the political scene is intended. So long as labor works within the existing order, its use of the general strike is almost certain to cause more harm to labor than good; a real general strike is a revolutionary weapon.

Strike strategy. If we look at strikes from the standpoint of strategy, we may distinguish the following kinds: (1) the walkout; (2) the sit-down; (3) the strike on the job. The most common is the walkout. At a specified time the workers lay down their tools and leave the establishment. Usually a picket line is established to inform other workers and prospective customers that a labor dispute exists. The problem of the union is to keep the men out and bring the employer's business to a standstill so that he will have to come to terms.

Keeping the men out involves ordinarily some *strike benefit*: that is, some payment by the union to the strikers (either in cash or in food) to supplement their own meager resources and what they can borrow from friendly merchants. This is certainly the gravest problem facing the union, for strikes tend to disintegrate rapidly when the strikers' food gives out. Unions may be able to supply these benefits from their own "defense funds" or treasuries, or money may be collected from friendly individuals and unions, or special functions may be held to raise money for the strikers. To some extent, the attitude of the federal relief authorities in recent years—that strikers are entitled to relief if they are needy—has tended to lighten the burden of the unions in this respect.

Funds are also needed for publicity in the form of leaflets, newspaper advertising, radio time, and the like. If union men are arrested, bail bonds may be required and fines will have to be paid. Then there are expenses entailed in hiring halls for meetings, automobiles for transportation, and so on. It is the lack of funds which explains in large part why short strikes are

most likely to be successful. The longer the strike lasts, the greater the danger of exhausting the funds of the union and of the strikers, and the more likely are the latter to return to work on the employer's terms.

Closely related to the need for funds is the problem of maintaining the strikers' morale. The strikers must feel that they have a good chance to win the strike, else they are certain to become discouraged and straggle back to work. Employers resort to "scabs" and strikebreakers, pretend feverish activity in the plant (announcements, for example, that the plant is running almost at capacity), and employ similar devices in order to break morale. To keep it up, unions hold mass meetings, disseminate optimistic news bulletins, and picket. For, besides the functions of picketing mentioned above, it serves also to get the men out of their homes and on the picket line where they consort with their fellows and are cheered up by them. Enthusiasm can be best maintained when strikers are gathered in large numbers. If each goes to his own home and stays there he is likely to become depressed by the lack of food, the distress of his wife and family, and, perhaps, the small chance for success.

The sit-down strike, sometimes called a *folded-arms* or a *stay-in* strike, is a very recent development and seems already to have passed its peak. In 1936, the first year that any real number of sit-downs took place, there were 48 such strikes. In 1937, a wave of them brought the total to 477, but by 1938, the number had fallen to 52.⁷ In this stoppage of work the employees do not walk out of the plant and refuse to return to work. Instead the employees remain in the plant but do not work. In some cases the sit-downers leave the plant at the end of the day and return the next day to resume their sit-down; in others, they stay in the plant continuously, eating and sleeping there. In the latter case, the union must get food and clothing to the strikers, communicate with them, establish rules for behavior within the plant which will maintain sanitary conditions and also prevent drunkenness, immorality, and destruction of machinery.

From labor's standpoint the sit-down has certain advantages over the walk-out. It is much more difficult for the employer to hire strikebreakers to take the place of the workers when the latter are already occupying the plant. Furthermore, in order to force the employees to leave, physical violence would have to be resorted to by the employer or by the forces of law and order. In the resulting conflict the employer's own plant may be injured. Unfavorable public opinion may be created by these disturbances, something the employer usually is careful to avoid, for he does not wish to antagonize his potential customers, the public. On the other hand, the sit-down strike may just as easily prejudice public opinion against the strikers; and hence it is an exceedingly dangerous weapon to use.

⁷ *Analysis of Strikes in 1938, loc. cit.*, p. 20.

In the "strike on the job," which does not involve the actual quitting of work, the men keep their jobs, but proceed to embarrass and annoy the employer in as many ways as possible. They generally slow down on their pace and restrict output, commonly called *soldiering* or *ca'canny*. In some instances they may resort to sabotage, a term originally used to describe conscious restriction of output, but now used to designate injury to materials and machinery. It is impossible to estimate the extent of "strikes" of this sort, but there is no evidence to indicate that they are either widespread or serious.

VIOLENCE

As a general rule, workers recognize that violence will antagonize the public and consequently do all in their power to prevent it. This is not always true, however, since in some cases they feel that it is only through direct action that they can win. When the truck drivers were striking in Minneapolis they determined not to let strikebreaking drivers deliver goods, even if this involved overturning trucks that came into the area without their approval.

If the workers are on strike the employer may try to use strikebreakers. Consequently the strikers may maintain a picket line around the plant. The strikebreakers—"scabs," as they are called—have to pass through the picket line. Naturally the strikers are not friendly toward these men. They may use abusive language in asking them to refrain from working. The strikebreakers are usually men and women who have been hired from the outside to do a dangerous job. They may not have high moral standards, and it has been found that some were ex-convicts. In these circumstances friction is likely to develop between the strikers and the strikebreakers.

Violence may be precipitated by the employer or by public authorities who take action against the strikers. The use of labor spies, whose activities will be described later,⁸ has been quite common, and contributes to violence. General Motors alone from January 1, 1934, to July 31, 1936, spent roughly a million dollars for detective services.⁹ Senator La Follette said of the detective agency and the industrial spy: "They are schooled in trickery; secrecy is their stock in trade, deception necessarily the law of their existence."¹⁰

Of far greater moment in causing violence are the armed guards hired by employers to safeguard their property. These men do not like pickets and often attack them. Then, again, state or city police sometimes arrest strikers when they are picketing a plant, oftentimes clubbing them into submission or, even when they do not resist, knocking them unconscious. Because employers as a rule cannot secure an injunction against the strikers unless

⁸ See below. Chapter 25.

⁹ See Report on Industrial Espionage, 75th Congress, 2d Session, Senate Report No. 46. Government Printing Office. Washington, D. C. 1938. Part 3. P. 25.

¹⁰ Robert M. La Follette, in *National Lawyers Guild Quarterly*, 1938, p. 5.

violence has occurred, it is often advantageous for them to provoke violence. It is a relatively easy matter for an employer to hire someone to precipitate violence and then to accuse the union of having been responsible.

A sheriff thus describes the killing of seven textile strikers on September 6, 1934, in North Carolina:

The workers and strikers had been arguing for about an hour. We were watching the situation and doing all we could to quiet it. I was holding one of the workers to keep him from getting at some of the strikers who had come up to stop the mill from running. There were lots of words passed. Suddenly the first bit of fighting I saw was a man knocked down. I think he was an officer. I don't know who hit him. Then the firing started. I don't know who shot first. I didn't know all the men out there and there were only a few women. In a minute it seemed everybody was shooting. From what I can learn, all the men killed were strikers. Most of the wounded were strikers. Maybe one or two workers were hurt, but we haven't been able to learn who. So many who were hurt only a little left after the shooting.¹¹

As a general rule when violence occurs more strikers are killed or injured than anyone else.

When the state militia or the national guard is called out for strike duty, violence is perhaps even more likely to occur. These men are not in the pay of the employers, but since they are trying to protect the property and lives of the citizens of the state, many of them consider the strikers an unmitigated nuisance. Furthermore, strike duty is unpleasant and dangerous. Even if they try to be fair, they are bound to hinder the activity of the strikers, for they may regulate picketing or restrict the number of strikers who may gather for a conference near the plant. Occasionally, under the guise of preserving general order, strike leaders are arrested without any particular charge being leveled against them. Sometimes citizens' committees are organized by the manufacturers or others "to preserve law and order." Usually they function against the best interests of the strikers.

Sometimes workers themselves precipitate violence, for it is not easy for labor unions to control all their followers. In the Ford plant are some 80,000 workers. A strike leader may desire to have all of his union members lean over backward in avoiding conflict, but some young hothead may resent the club of a policeman and retaliate. On the other hand, men in the state militia are often inexperienced youngsters who fire when shooting is unnecessary and thus provoke bloodshed and a disastrous riot.

PREVENTING OR REDUCING STRIKES

Strikes cause trouble for everyone. The public is inconvenienced, strikers lose their pay, and employers find them expensive and difficult. What can

¹¹ Joseph J. Senturia, *Strikes*. University of Chicago Press. Chicago. 1935. P. 37.

be done to reduce or eliminate them? Later the methods which have been used will be treated in detail. Here we can do no more than to outline a few of the more recent developments.

In the first place, minor grievances can usually be settled by representatives of the workers and the management in joint conference. In the garment trades differences have been settled in just this way for years. When we turn to larger issues, such as wages, hours, or the closed shop, a step in the right direction would be union recognition on the part of the employer.

To say that workers should not organize or to refuse to meet with the representatives of organized labor is more likely to promote strikes than to prevent them. How can grievances be successfully settled, except by a strike, if the employer refuses to meet with the representatives of the group that feels itself aggrieved? Once the union is given recognition, then differences can begin to be settled through conference. In fact, the rulings of the National Labor Relations Board have stipulated that the employer and the union must meet together and make a genuine effort to reach an agreement.

The United States Department of Labor maintains a staff of conciliators who try to serve as neutral observers and settle grievances. Roughly two-thirds of the states have a somewhat similar service. Sometimes the president of the United States appoints an investigating board which settles a dispute, as was done in the case of the textile strike of 1934.

When unions have strong organizations they sometimes sign a contract with an employer providing that disputes which both sides are unable to settle to their mutual satisfaction shall be referred to an impartial arbitrator whose decision is final. This method has been used extensively, and with great success, by the Amalgamated Clothing Workers.

Canada has tried an interesting plan for reducing strikes in communication, mining, public utilities, and transportation. Within these fields the law requires that the employer or the union must give thirty days' notice before changing either hours or wages. If the change is opposed by either side, then it cannot take effect nor can the union strike until a state board has made a thorough investigation of the entire matter at issue. After the board has reported and made public its findings, both sides are at liberty to take such action as they desire. There is little doubt that the plan has been helpful in preventing strikes. In the United States a similar plan has been satisfactorily used in the railroad field. If industrial conflict threatens in this area the president of the United States can appoint a board to investigate the situation, and, as in Canada, no strike can be called nor can any changes be made in wages or hours until the investigation has been completed and a report made.

In 1920 the State of Kansas forbade strikes and lockouts in certain industries and provided for compulsory arbitration. All disputes had to be referred

to a court of industrial relations, but after opposition from both employers and employees and after unfavorable decisions of the United States Supreme Court, the plan was abandoned.

In the United States labor feels that it is dangerous to submit all disputes to a labor board for decision and to waive entirely the right to strike. There is no guarantee that capital may not secure undue representation on such a board. Furthermore, even if the board is strictly impartial, the maintenance of the *status quo* may be unjust. Labor feels that it should have the right to progress, to increase its wages, and to shorten its hours of labor. It feels that changes in status cannot be so easily brought about by a judicial process as by the increasingly effective organization of the workers and even by the use of the strike to prove to the employer the power which labor really possesses.

OTHER UNION WEAPONS

Later sections of the book will discuss other aspects of the strike, such as the abrogation of civil liberties, and will consider other instruments used by trade-unions in pursuing their objectives. Here it is sufficient to observe that the strike is still the single most powerful weapon which organized labor has. The *boycott*, that is, the refusal of workers to patronize an employer engaged in a labor dispute and the persuasion or coercion of others likewise to refuse their patronage, would, if the courts permitted, be a valuable addition to labor's resources, but, except in rare instances, it would never have the potency of a strike. Similarly, the threat of withdrawal of the *union label* might, in given instances, compel employers to come to terms, but the union label scarcely compares in effectiveness with the strike.

It is because of the strategic value of the strike, even if unions do not resort to it, that labor places such a high estimate on the strike and guards it jealously against encroachment. It is for this reason that organized labor has consistently refused to give up its right to strike or to accede to any measure which might threaten that right.

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QUESTIONS

1. How far is the strike a measure of industrial unrest?
2. What causes of strikes can you name? Which is the most frequent cause of difficulty?
3. Describe the various kinds of strikes.
4. Have you ever learned the facts about any strike situation? What was the cause of it? Where did you get your information? What occurred during the strike? How was it finally settled?
5. Describe the tactics used in some particular strike situation (a) by the workers, (b) by the employer, (c) by the government or the police department.
6. Do you think that strikes are worth their cost? Why? Why not?
7. Is it just to require a worker to join a union before letting him secure a job?
8. Describe various methods of preventing or reducing the number of strikes. Which method do you feel is the best? Why?

BOOK TWO • • • THE AMERICAN LABOR MOVEMENT

A HISTORY OF THE LABOR MOVEMENT: FROM ITS ORIGINS

TO THE 10 . . . KNIGHTS OF LABOR

THE BEGINNINGS OF UNIONISM

THE first organization of workers in the United States to maintain a continuous existence was formed by Philadelphia shoemakers in 1792, and lasted less than a year. In 1794 the Philadelphia shoemakers again organized and continued to exist as a union until 1806. The first union of printers was organized in New York City, also in 1794. Temporary organizations of workers which disappeared with the end of a strike and associations which embraced both workers and master employers were established earlier than these true unions.

Although the date of the first real American strike is disputed,¹ there is good evidence that a printers' strike occurred in New York City as early as 1778; the strikes of shoemakers in New York in 1785 and of Philadelphia printers the following year cannot be questioned. Strikes of shipbuilders, printers, cordwainers (workers in new leather), and tailors occurred near the turn of the century. During the first two decades of the nineteenth century, continuous organizations of shoemakers and printers existed in Philadelphia, New York, Baltimore, Pittsburgh, Boston, Washington, and New Orleans. These early unions carried on many strikes for wage increases.

¹ John R. Commons and Associates, *History of Labor in the United States*. The Macmillan Company. New York. 1918. I, 25 states that the Philadelphia printers' strike of 1786 was the first. The evidence in Richard B. Morris, "Criminal Conspiracy and Early Labor Combinations in New York," *Political Science Quarterly* (March, 1937), Vol. 52, No. 1, pp. 51-85, indicates that, to the contrary, there may even have been a strike of journeymen tailors in New York in 1768.

The emergence of trade-unions was accompanied by the formation of employers' associations which sought to procure nonunion labor and frequently utilized the courts in their fight against workers' organizations.

Early labor cases. Almost from their inception, the activities of trade-unions encountered opposition in the courts. Of six recorded cases charging criminal conspiracy against the shoemakers between 1806-15, four were decided against the workers. As late as 1835 the Supreme Court of the State of New York declared that a strike of workers for the purpose of raising wages constituted an unlawful conspiracy. In charging the jury during the trial of shoemakers in Philadelphia in 1806, the court observed: "A combination of workmen to raise their wages, may be considered in a two-fold point of view: one is to benefit themselves . . . the other is to injure those who do not join their society. The rule of law condemns both." It was not until the decision of Chief Justice Shaw of the Supreme Judicial Court of Massachusetts in the case of *Commonwealth v. Hunt* (1842),² that an important court of the United States took the position that a strike of workers to improve their conditions was lawful and not a criminal conspiracy.

Although the workers adjudged guilty of criminal conspiracy in most of the early cases were rarely required to do more than pay nominal fines and court costs, that does not mean that they were not critically affected by the antagonism of the courts to the activities of unions. The unfavorable attitude of judges hindered the growth of unionism and dissuaded workers from attempting to improve their status by engaging in strikes.

Union activity during an early business cycle. The panic of 1817, which ushered in the first American depression similar to those of more recent years, put a temporary end to union activities. Only when business began to improve several years later were unions once again formed. As organizations of hatters, tailors, cabinetmakers, and other workers were established, many strikes took place, especially in 1824 and 1825, when prices rose rapidly. The 1825 strike of Boston carpenters to secure a ten-hour day attracted wide attention. Nearly six hundred carpenters engaged in the strike, which encountered objections from the "gentlemen engaged in building," for whom the master builders were performing work. They declared that a shorter day would promote idleness and vice. They asserted that attempts to affect the value of labor by decreasing the length of the working day would be harmful to the interests of other classes in the community. They placed the blame for the strike upon outside agitators, announced their determination not to countenance the ten-hour day, and threatened to suspend operations altogether rather than yield to the workers.

² 4 Metcalf 111 (1842).

Few of the workers in trade-unions prior to 1827 had been affected by the Industrial Revolution, which was rapidly beginning to make its influence felt in the United States, especially as a result of the Napoleonic Wars and the War of 1812. The carpenters, shipwrights, shoemakers, and tailors, among whom the early trade-union activities had most commonly been carried on, were engaged in pursuits which were not yet affected by the machine and the factory system. The growth of unions early in the century was caused in part by the increasing numbers of workingmen who came into contact with one another in industrial centers and recognized that their status might be improved by joint action.

Unions in a period of depression: 1827-33. The first city-wide organization of trade-unions in this country was formed in 1827, when several of the trade-unions in Philadelphia organized the Mechanics' Union of Trade Associations. Although the Mechanics' Union started as an economic organization, the panic of 1827, which seriously weakened the trade-unions, caused it to shift its activities to politics in 1828 as the Workingmen's party of Philadelphia. For several years it attempted to secure measures which were thought necessary to protect the interests of the workers. In 1828 the new party held the balance of power in the city, but it soon lost influence, and had gone out of existence by 1831.

Immediately after 1827 local workingmen's parties were established in New York City and in Boston, and state-wide labor political organizations were formed in Massachusetts and New York. Before long, however, the New York workers succumbed to the rival blandishments of Tammany, and the Workingmen's party of New York went out of existence. The significance of these first American labor parties lay in their publicizing of the demands of labor and in their work in securing the passage of various types of legislation rather than in their success at the polls.

THE MOVEMENT FOR EQUAL CITIZENSHIP AND HUMANITARIAN REFORM

In 1825, Robert Owen, who had acquired fame in Europe as an outstanding factory manager and had received much notice for his advocacy of an ideal society to replace capitalism, came to the United States and founded a community at New Harmony, Indiana. Many persons joined him who were interested in building a society in which social injustices would not exist. His son, Robert Dale Owen, also came to the United States, and remained here after his father returned to Great Britain after the breakup of the New Harmony colony in 1828. It is not unlikely that the ideas of the Owens influenced the declarations of the Mechanics' Union of Trade Associations, which said little about the improvement of hours, wages, and working

conditions, or the necessity of promoting trade-unions, but emphasized instead greater social equality. The Workingmen's party, which grew out of the Mechanics' Union, drew up a program in favor of a general system of education and the restriction of the monopoly power exercised by banks and merchants.

The political movements of this period were not so much the expression of the workers themselves as of reformers who wished to promote the interests of labor and of society as a whole. These reformers may be separated into three groups. The first was influenced by the teachings of the Owens, and was led by Robert Dale Owen and Frances Wright; the second, whose members called themselves "Agrarians," was represented by Thomas Skidmore; the third group comprised the land reformers and was led by George Henry Evans. While the principal ideas of these leaders were supported by various groups of workers, the latter were not greatly influenced by them. The reformers, however, were not without influence in the passage of legislation related more or less closely to their original programs.

Legislative reforms. When the United States adopted the federal Constitution, not all Americans had the right to vote. Workers were frequently prevented from voting by various property qualifications. In Pennsylvania, for example, the right to vote was extended only to those persons who paid some kind of tax. Massachusetts did not extend suffrage to workers until 1820, and New York followed in 1822. By the close of the 1820's most male workers in the industrial states possessed the franchise. It is not surprising that some of them sought to employ the vote to secure favorable legislation, and that reformers hoped to have their measures adopted through political activities supported by the workers.

American workers, who were supposed to enjoy the blessings of liberty and equality, were interested in legislation which would increase their power and make their economic position equal to that of their employers. They supported Andrew Jackson in his opposition to the banks. They fought against imprisonment for debt. In Pennsylvania they opposed compulsory militia service, and demanded the passage of mechanics' lien laws so that in case of their employers' bankruptcy their right to be paid the wages due them would take precedence over the claims of other creditors. In these measures they saw the means of directly and materially improving their status. The reformers, however, had other solutions to the problems of the workers.

The reformers. Robert Dale Owen and Frances Wright declared that the hope of the workers lay in a change in the system of education and advocated that the state establish boarding schools where the children of all citizens, rich or poor, would receive equal instruction and similar food and

clothing at the public's expense. Such "state guardianship" would enable the children of both poor and rich to grow into manhood with a similar educational equipment and would put all citizens on a basis of equality. Although this movement made little progress, it presented the need of free universal public education for the children of workers so clearly that in various parts of the country public school systems were established. The New York and Pennsylvania public school systems date from 1832 and 1836, respectively. Labor organizations and their leaders supported educational reformers, such as Horace Mann, in the fight for free public education and brought it to a successful conclusion in the decades following the 1830's. From that time on trade-unions have been interested in the public school system and have played a significant role in bringing about changes in state and municipal educational systems favorable to the worker.

Skidmore, the leader of the "Agrarians," believed in the equal distribution of wealth, which he regarded as principally represented by land. He was influenced by the ideas of those English writers who believed that land properly belonged to all the people and that no just society could be brought about until every man had a right to an equal share in its use.³ Skidmore also stressed the existence of a class struggle. For a short time his program was adopted by the Workingmen's party of New York in order that it might forestall, by demanding changes which were of a fundamentally radical character, any attempts of the employers to increase the length of the working day during the depression. The employers had threatened to increase the length of the working day to eleven hours, but after they gave up the idea, the workers soon repudiated Skidmore's agrarianism.

Land reform. The leader of the third group of reformers, George Henry Evans, advocated land reform, proposing that the public lands be divided into what he called "rural republican townships." The land might be held privately, but it would be given only to persons who intended to settle upon it. He argued that free homesteads made available to would-be settlers would encourage urban workers to seek their living as farmers on such land and would thus bring about a higher rate of wages in the communities which they had left. These homesteads were to be exempted from attachment for debt, and, to prevent their sale by the homesteaders, they were never to be disposed of to others once possession was acquired. The amount available to each settler was to be limited to prevent wealthy persons from taking large blocks.

Evans' ideas attracted considerable attention among workers, as well as

³ Skidmore's *The Rights of Man to Property: being a Proposition to make it Equal among the Adults of the Present Generation: and to Provide for its Equal Transmission to Every Individual of Each Succeeding Generation, on Arriving at the Age of Maturity*, published in 1829, reveals the general character of his philosophy.

among persons interested in the development of the West, and their influence is found in the Homestead Act of 1862, which required only that the settler establish himself for a certain period in order to acquire possession of the land. The idea of exempting homesteads from debt was also incorporated in the law. Although no single settler might take up more than 160 acres of land, there was no prohibition on subsequent sale, nor was there any limitation upon the amount of land which might be acquired by individuals as Evans had proposed.

THE LABOR MOVEMENT IN A PERIOD OF PROSPERITY: 1833-37

The decrease in the real income of the workers, brought about by the rise in prices which began in 1833, led to extensive economic activity among them. Wage earners who had previously never been organized, including handloom weavers, plasterers, cigarmakers, seamstresses, and milliners, now formed unions which appeared not only in New York, Philadelphia, Baltimore, and other Eastern cities, but as far west as Pittsburgh, Cincinnati, and St. Louis. Throughout the country numerous central trades' councils, similar to the earlier Philadelphia Mechanics' Union of Trade Associations, were also organized. These city centrals generally avoided politics and interested themselves primarily in the immediate economic advancement of the members of their constituent unions. In August, 1834, the trade-unions of New York invited the unions of various cities throughout the country to meet at a central conference. As a result the National Trades' Union was formed. One of its principal aims was to secure the ten-hour day for government employees in the hope that private employers would follow the government's example.

The ten-hour day. The federal government was slow in adopting the ten-hour day, which by 1835 was common in certain industries and was accepted shortly after that date by many state and local governments. Ely Moore, a printer and formerly president of the New York Trades' Union, elected to Congress through labor votes, presented to Congress a petition of the National Trades' Union requesting the ten-hour day for federal employees. The petition was not approved, and the union appealed to President Jackson, who had been supported by the workers. An order was issued making the ten-hour day effective only in certain localities in which the agitation had been most insistent. Pressure from labor for the shorter day continued despite the disappearance of the National Trades' Union in the panic of 1837. Finally President Van Buren, in 1840, issued an executive order establishing a ten-hour day with no reduction in wages for government employees.

A large number of strikes, many of them for the ten-hour day, marked the active union movement of this period. Even women workers in the textile

factories of New England resorted to the strike. The employers sought to protect themselves against the unions by forming their own associations and by bringing suits for conspiracy in the courts, where they met with less success than they had earlier in the century. In some occupations, notably those of the shoemakers and the printers, the local trade-unions formed national unions of their crafts. These, however, together with the National Trades' Union and the many local organizations, disappeared when serious unemployment followed the crisis of 1837.

DEPRESSION AND REFORM: 1837-50

The depression which lasted until the summer of 1843 resulted in the complete destruction of the labor unions of the 1830's. The panic of 1827 had been followed by political activity on the part of the workers. Their morale seems to have been so undermined by the depression following 1837, however, that they appeared as little interested in political activity as they were in aggressive economic action through trade-unions. With the coming of better times, however, many new trade-unions came into existence.

Reform and Utopianism. The most interesting development of the period, however, was not the revival of unionism; it was the extraordinary interest shown in a large number of reform movements. The years following 1843 have been disrespectfully spoken of as the "hot-air" period in American labor history. Reformers, most of them without working-class antecedents, flourished on all sides, received much attention in the press, and attained the support not only of the liberals of the day, but of many workers as well. The drive for educational reform continued throughout the period and was increasingly successful. The ideas of Evans and the land reformers also received increasing support. In addition to these reform movements there were the American reflections of schemes of European Utopian socialists and the attempts to establish producers' and consumers' co-operatives.

Two French reformers, Étienne Cabet and Charles Fourier, inspired attempts to establish ideal societies in the United States. In 1848 some French disciples of Cabet arrived in Texas to set up a society patterned after their master's ideas. Poor judgment in the purchase of land and adverse weather conditions led to the failure of the experiment and the removal of the colonists to Nauvoo, Illinois, where they prospered for several years before the colony was finally abandoned. Of greater importance was the effort to establish a society according to the Fourier principles of "association." In the early 1830's Albert Brisbane had come under the influence of Fourier. A number of New England intellectuals, led by George Ripley and supported by Emerson, Bronson Alcott, and Margaret Fuller, established the Brook Farm

colony in West Roxbury, Massachusetts, in 1841. In 1845 Albert Brisbane influenced Ripley to turn Brook Farm into a Fourier community. Two years later, however, the experiment broke up, and its adherents turned to other reforms.

Co-operation. The co-operative movement obtained wider support from the workers than these attempts to found ideal communities. As early as 1806 the shoemakers of Philadelphia had attempted to run a co-operative shoestore. During the depression following 1837, carpenters, shoemakers, and tailors attempted to establish producers' co-operative shops which would employ their own members. Even workers who had lost a strike tried to establish such shops. In the 1840's consumers' co-operation, attempted and discussed earlier, also attracted the workers, especially in New England, but neither producers' nor consumers' co-operation was successful during this period. Numerous co-operative societies, however, maintained a precarious existence for some time, and American workers long continued to interest themselves in co-operation as a means of solving their economic problems, especially when the possibility of improving their condition by means of strikes was slight.

In the period from 1827 to 1850, workers who in prosperous years had formed unions and carried on strikes to improve their economic status devoted their attention in years of depression to less direct and less realistic endeavors in political and reform movements. Workingmen's parties of 1828-30, for example, which had brought about such practical reforms as the abolition of imprisonment for debt and the passage of the mechanics' lien laws, shared the attention of the workers and their leaders with the radical philosophies of an educational and agrarian variety. The workers were attracted by humanitarian endeavors calculated less to bring about an immediate improvement in their status than to change the nature of society so as to achieve social justice. Ever since the late 1820's, depression conditions have produced philosophies designed to change the economic system. When trade-union activities, however, have promised to result in immediate gains, the workers have devoted their energies to them, paying comparatively slight attention to reform and political movements.

Up to the panic of 1827 trade-unions were confined to workers whose condition was only slightly affected by the Industrial Revolution. To a marked extent this continued to be true, with one important exception, for the next two decades. The rapid growth, especially in New England, of the textile industry and the factory system which accompanied it gave rise to organizations of women textile operatives. With the aid of the New England Workingmen's Association they agitated vigorously for shorter-hour legislation.

THE BEGINNING OF PERMANENT NATIONAL TRADE-UNIONS

The rising cost of living and an improvement in business conditions in 1847 brought a revival of union activities. Trade-union organizations in New York and elsewhere became more numerous, especially among carpenters, painters, tailors, and printers. Many of the active unionists of the 1850's were immigrants who had come to the United States because of oppressive conditions in Ireland and other European countries or as a result of the abortive European revolutions of 1848.

None of the earlier efforts to form national unions in some crafts enjoyed lasting success. In the 1850's various crafts formed fairly permanent unions: the first of these was the printers, who organized the National Typographical Union in 1850. The stonecutters' locals formed a national union in 1853, the hat finishers' in 1854, and the molders', machinists', and puddlers' in 1859. Though the growth of such national unions was hindered by the crisis of 1857 and the Civil War, new economic conditions, especially the development of railroads and the consequent extension of the competitive market beyond the confines of a single city or state, favored their continuous existence.

Retail prices rose rapidly during the Civil War period, but wages, as is common in times of increasing business activity, lagged far behind. As a result trade-union activity was greatly stimulated. Local trade-unions were organized in nearly every trade beginning in 1862, and in the next year the first central trades-union or local federation of unions of the period was formed in Rochester, New York. Although the attempt to create a permanent national federation of central trades-unions in 1864 failed, the national trades-unions increased greatly in number and strength. One was organized in 1861, two were organized in 1863, four in 1864, and six more in 1865. In 1866-67, which were depression years, no additional national unions were formed, but in the next two years, four more came into existence. The three-year period beginning in 1870 witnessed the formation of nine new unions. Thus, in the years from 1861 to 1872, a total of twenty-six new national unions made their appearance.

THE EIGHT-HOUR MOVEMENT

During this period the eight-hour day was a major concern of the trade-unions. In 1864, Ira Steward organized a Grand Eight-Hour League in Boston. Local eight-hour leagues were formed throughout the country, about eighty being founded during the twelve years after 1865, twenty of which were in Massachusetts and twenty-five in Michigan. Grand Eight-Hour Leagues were established in four states. A significant step in the direction of

a national labor movement came in 1866 with the National Labor Union, formed by trade assemblies, eight-hour leagues, and officers of some of the national unions. The organizations which were founded primarily to secure an eight-hour day were wiped out in the panic of 1873, but the movement itself became important in the field of trade-unionism, and the effort to secure a shorter working day was second in importance only to the demands of the national unions for wage increases. The activities of these organizations made possible the later realization of the eight-hour day.

Steward's eight-hour theory. The eight-hour movement of the 1860's was influenced by an economic argument which obtained widespread acceptance among labor organizations. Ira Steward expressed the theory by the couplet

Whether you work by the piece or work by the day,
Decreasing the hours, increases the pay ⁴

He believed that a reduction of hours would bring about an increase in wages and an improvement in the standards of living of the workers. With the reduction of hours, the workers would have greater leisure, which would result in an increased number of wants. Long hours so fatigued the worker that he had little time to think about the advantages of a higher standard of living, but a reduction of hours brought these advantages clearly to his attention. The workers, in order to obtain higher standards of living, should concentrate their efforts upon the securing of higher wages, organize and support trade-unions, and attempt to secure a reduction in hours by legislation. Steward placed great hope in the last, and his Grand Eight-Hour League of Massachusetts was established principally to secure favorable legislation.

Eight-hour legislation. The National Labor Union worked to secure an eight-hour law for federal employees because it was believed that such a law would make it easier to win an eight-hour day elsewhere. The law enacted in 1868, however, was by no means as successful as its protagonists had hoped. The question of whether the new eight-hour day should be accompanied by a corresponding reduction in wages remained unsettled, and the law was subject to such varied interpretations that it did not secure an eight-hour day for all the employees who were supposed to be covered by it. In 1872, however, President Grant prohibited by proclamation any wage decreases which might be put into effect in carrying out the law, and in the same year Congress made provision for back pay to those workers whose wages had suffered a reduction because of it. Hours laws of a more general nature were also enacted by a number of states, but, merely defining a legal

⁴ See Chapter 6.

day's work, they permitted working days longer than those specified in the statute if the wage contract provided for more hours, and lacked adequate enforcement machinery.

GREENBACKISM AND CO-OPERATION

Early in its career, the National Labor Union, joining the farmers and other debtor classes who wished to keep in circulation the many millions of greenbacks which had been issued during the Civil War, became interested in the Greenback movement. Greenback-Labor theory was different from that of the movement supported by the debtor classes. The Greenback-Laborites proposed that the rate of interest on government bonds be reduced to 3 per cent, and that the bonds be made convertible into legal tender currency which might be freely exchanged for the bonds at will of the holder. It was hoped that by this method a general reduction in interest rates might be secured, since the government would stand ready at all times to pay 3 per cent interest on the government bonds which were exchangeable for greenbacks. The large number of such bonds outstanding would so increase the amount of money which could be obtained by borrowers that the much higher interest rates, frequently as high as 10 or 12 per cent, which were charged by the banks, would be reduced to the 3 per cent rate because of government competition in the money market. As a consequence of the greater amount of credit available at relatively low interest rates, it would be easy for workers to become self-employers and thus rise from their wage-earner status.

Producers' co-operatives. This Greenback philosophy was closely associated with the attempts of labor organizations to promote producers' co-operation. It was believed that the reduction in interest rates which would accompany the adoption of the Greenback-Labor reform would make it easier for producers' co-operative societies to obtain the necessary capital. In the late 1860's various worker groups tried experiments in producers' co-operation, many of which followed unsuccessful strikes.

The molders, influenced by William H. Sylvis, who became president of the Iron Molders' International Union in 1863, were an important group in the co-operative movement. The molders' union operated large numbers of co-operative foundries in several Eastern cities. The first of these, established in Troy, New York, in 1866, enjoyed financial success from the beginning, but after three years it demonstrated the usual tendency of successful producers' co-operatives: it became capitalistic in outlook and restricted the numbers of participants.

Political action. The National Labor Union early became interested in the formation of an independent labor party, and in 1872 it met as a political convention to nominate a national ticket. It adopted a Greenback platform and established a party under the name of the National Labor and Reform party, nominating Judge David Davis of Illinois as its candidate for president. After accepting the nomination, Judge Davis resigned, and the loss of its candidate killed the new party. The National Labor Union, which by that date had ceased to exert real influence, soon went out of existence.

The failure of this venture in independent political action showed that American workers were not ready to abandon the old parties and that Greenbackism did not make any fundamental appeal to them. Cheap money did not attract the workingmen. They were essentially interested in higher wages and shorter hours. The brief period of industrial activity which preceded the crisis of 1873 brought about conditions which encouraged the formation of local craft unions.

THE KNIGHTS OF LABOR

Origins of the Knights of Labor. Before the practical economic philosophy of trade-unionism became predominant in the American labor movement, the workers took one last fling at a reformist type of unionism. The Noble Order of the Knights of Labor began as a small local union of clothing cutters in Philadelphia in the year 1869, under the leadership of Uriah Stephens. New local assemblies were slowly formed, and in a number of important industrial states the number of Knights of Labor locals grew even during the years of depression. Its membership expanded at first because it was a secret society, which enabled the workers to join it without risking retaliation from the employers. In 1878, with the meeting of its General Assembly, the K. of L. assumed the form of a national union.

The garment cutters who had organized Local Assembly No. 1 believed that the restricted craft attitude of the existing trade-unions tended to divide rather than to unite the workers. They desired the organization of a union which would accept all workers, regardless of race, sex, or craft, and they were not opposed to the inclusion of farmers and members of the lower middle class and the professions. Later, the Order excluded from membership lawyers, doctors, bankers, and those who had sold liquor or made their living by its sale.

Purposes. The Knights of Labor hoped to achieve labor unity by organization and education. Revolutionary in ultimate goal—the abolition of the wage system—but not in method, the Order advocated social reforms, especially during the early years. It emphasized the advantages of co-operation, advocated legislation to improve the status of the worker, and demanded

the establishment of government bureaus of labor which would obtain and make public information concerning the needs of labor and the conditions of the workers. At first unwilling to employ economic weapons such as strikes and boycotts to better labor's lot, with the growth in membership the Knights became more aggressive in their activities, and devoted less attention to humanitarian endeavors.

During the depression after the panic of 1873 the growth of the K. of L. was slow. By 1878 the antagonism of the Catholic Church to secret organizations led several leaders to favor the abandonment of secrecy by the Order. This was partially accomplished by 1879, and the Knights came into the open as a labor organization. This change was largely due to the influence of Terence V. Powderly, a colorful figure who succeeded Uriah Stephens as the head of the organization in 1879 and served as its General Master Workman until 1893.

Structure. Theoretically the K. of L. was highly centralized. At the bottom were the local assemblies to which the workers belonged as individuals. The local assemblies were supposed to be responsible to the district assemblies, and the latter to the General Assembly, which in theory exercised a high degree of control over the functioning of the entire Order. In practice, however, this centralization was lacking, and the local and district assemblies frequently disregarded the decisions of the General Assembly and its officers.

The local assemblies of the Order were made up not only of workers in the same craft or trade; frequently they embraced all kinds of workers. These were called "mixed" local assemblies. After 1878 the number of mixed assemblies increased, especially in those areas where there were often not enough men in one trade to form a craft local. On January 1, 1882, out of a total of 484 local assemblies, only 116 were mixed locals. Four years later the number of locals had increased to 1,499, of which 836 were trade locals and 625 were mixed.

The Order accepted into its ranks not only local craft unions without changing their structure, but also a number of national craft unions as district assemblies, generally under the name of trade districts. Thus national unions of the telegraphers, glassworkers, miners, shoemakers, and others became national trade districts. There were also trade districts on a more limited scale, such as the trade district of printers in New York (1883) and that of the employees of the Union Pacific Railway in Denver (1885). Plumbers and government employees also joined the Order as local trade districts.

Examination reveals that although the local and district "mixed" assemblies were unions to which workers of all types were eligible, a large proportion of the assemblies affiliated with the Knights of Labor were really craft

or industrial unions, membership in which was restricted to workers in a particular trade or industry.

The K. of L. and the trade-unions. In their endeavor to include all American workers in a single organization, the Knights of Labor came into conflict with many trade-unions, including the national units of cigarmakers, carpenters, and molders, which refused to be absorbed. During the 1880's both the Knights and national unions on the outside made unsuccessful efforts to reach an agreement which would bring them together. With the appearance of the American Federation of Labor in 1886, the hope for unification of these unions with the Order rapidly diminished, and the opposition between the two became more and more intense.

Strikes and the K. of L. In spite of the antipathy of the leadership to the strike as a weapon, the K. of L. became involved in many strikes during the 1880's. The national officers attempted to avoid these strikes but were soon forced into a policy of supporting them and aiding the striking unions. Largely as a result of a number of successful strikes the Knights attained their greatest membership. In 1885, the Gould railway system was forced to accede to the demands of Knights of Labor strikers. Following a 10 per cent wage reduction affecting shopmen and other workers on the Missouri, Kansas, and Texas, and on the Wabash Railway in 1884 and 1885, respectively, a strike broke out, and a K. of L. organizer was sent with a promise of funds to support the fight against these reductions. Local assemblies were organized in a number of important railway centers, the trainmen came to the support of the strikers, and the railroads ordered wages restored. Later, in 1885, when the members of the Order were laid off by the Wabash Railroad and the railroad's shops were closed down, the officers of the Knights concluded that this was an effort to break the union and declared that the men had been locked out. During the summer, members of the Order on a number of other railway systems struck in support of the Wabash employees, and, early in September, Gould and the officials of the railway agreed to reinstate the employees who had been locked out. The victory was complete, and the prestige of the Order mounted. This unexpected success against one of the greatest capitalists of the day, Jay Gould, brought thousands of new workers into the ranks of the Knights of Labor. The organization had 104,000 members in good standing in July, 1885; by the Fall of 1886, it had over 700,000 members.

On March 6, 1886, another strike broke out on one of the Gould lines, the Southwestern system. The workers were overconfident, Gould and his officials were adamant, and after some months the strike was called off, the Knights suffering a critical defeat.

The K. of L. reached its greatest height in membership and power in

1886, and then a complex set of causes brought about a rapid decline in membership. By July 1, 1888, the membership in good standing had fallen to 222,000; by 1890 a membership of only 100,000 was claimed; and by 1893 the figure had dropped to 75,000. By that time the Knights of Labor had ceased to be of any considerable importance in the American labor movement; its place had been taken by the American Federation of Labor and its constituent unions.

Significance of the K. of L. The Knights of Labor was the greatest and most important labor organization to develop in America up to the late 1880's. It was the last significant union movement with ultimate aims which were essentially reformist. This, however, should not obscure the immediate practical objectives of the Order in terms of wages, hours, and the like. It was also the only large-scale organization in our history theoretically built upon the structure of the labor union to which all types of workers were eligible. If it proved that masses of workers, both skilled and unskilled, could be brought into labor organizations, it also revealed that effective unionism could be developed only with difficulty among workers who had little more in common than the fact that they were all wage earners. It showed that a labor organization, no matter how idealistic and humanitarian in principle, must become involved in practical everyday struggle on the economic front to be effective and to reflect accurately the immediate interests of its membership. It also indicated that a theoretically centralized structure could not in practice take leadership and decisions away from the local, constituent units. From its weaknesses as well as from its positive achievements the significance of the K. of L. emerges. Professor Ware has well observed: "It was to fight consolidated capital that the Order tried to create an integrated labor society to replace . . . isolated craft alliances and conventions of reformers. . . . The solidarity of labor was fast becoming an economic reality if not a psychological fact, and it was the business of the Order to make the organization of labor fit the conditions of work."⁵

THE FIRST INTERNATIONAL IN AMERICA

After 1820 America came into contact with European Utopian socialism, and with the close of the Civil War the United States began to experience the influence of another socialist current from Europe. In 1864, the International Workingmen's Association, known as the First International, was organized in London. The International was profoundly affected by the ideas of Karl Marx, and at the meeting held in 1865 he presented in his famous "Inaugural Address" a political platform for the working-class movement of

⁵ Norman J. Ware, *The Labor Movement in the United States, 1860-1895*. D. Appleton-Century, New York. 1929.

the time. The leadership of the International was at first largely in the hands of Marx and his followers. A bitter struggle for control developed, however, between the Marxist socialists and the anarchist wing of the International led by Bakunin, a Russian revolutionary, which contributed heavily to its death in 1876, and to the removal of the seat of the general council of the International to New York, four years before that (1872).

From its new center the general council attempted to carry on the activities of the International, which was now controlled by socialists, most of whom were trade-union members. The fact that Marxian socialists in the United States were more interested in European than in American conditions hastened the decline of the International. In Europe they had engaged in political and revolutionary agitation. In America a developing trade-union movement was gradually losing its revolutionary and reformist coloring. Here, a working class highly conscious of the opposition between its ultimate interests and those of the employers was lacking. Furthermore the International in America was without the stimuli of leaders like Marx and of the exciting situation which prevailed on the European continent. Before its demise, however, it revived socialist activity here, influenced the formation of the Socialist-Labor party in 1876, and supplied important trade-union leaders who exercised a radical influence in the labor movement.

THE DEPRESSION OF 1873-78

The panic of 1873 ushered in five years of depression during which the American working class suffered. Wages fell universally and precipitously in 1873 and did not begin to advance markedly until 1879, although there was some recovery in business the preceding year. Trustworthy statistics are lacking, but all the evidence indicates that unemployment was widespread in all industrial occupations throughout the country. A letter addressed by the Central Committee of the Tradesmen's Union of Philadelphia to "Fellow Workmen" in the summer of 1874 declared:

The suffering of the working classes are daily increasing. They will soon be thrown into the deepest misery and affliction. . . . Soon one-third only of the actual number of workmen will be able to get employment, while the other two-thirds, homeless and hungry, will look out in vain for the better times prophesied by a lying press. . . . In the middle of summer we are en masse thrown out of work. Those who still are employed have to submit to constant reductions of wages, until the price of their labor falls to nothing.⁶

Decline in union membership. The unions, of course, suffered as a result of the depression, and the workers, characteristically enough, exhibited

⁶ *The Toiler*, August 1, 1874.

a growing interest in political action. In part this movement toward the political arena found expression in their link with local antimonopoly and reform parties of agrarian origin and in the National Greenback party, whose presidential candidate, Peter Cooper, polled over 81,000 votes in 1876. The depression added to the obstacles in the way of the formation of a national organization to take the place of the National Labor Union. Neither the Industrial Congresses nor the Industrial Brotherhood survived beyond 1875, and neither exercised any real influence upon the labor movement except through their platforms. The losses in trade-union membership during the depression years were staggering—not all trade-unions, of course, were equally affected—and it appears that there were only eight or nine national trade-unions alive in 1877 compared to about thirty in the first years of the 1870's.⁷

THE MOLLY MAGUIRES

The depression of the 1870's led to much unemployment and destitution among the anthracite coal miners of Pennsylvania. As early as 1861 a trade agreement had been in effect in the industry, but it was dissolved after the defeat of a long strike in 1874 and 1875 against a wage reduction. As a result the once-powerful Workingmen's Benevolent Association, which had represented the miners, completely disintegrated. Many of the anthracite miners were Irishmen who were members of the fraternal organization of Irish origin known as the Ancient Order of Hibernians. A small number belonged to a secret society called the Molly Maguires, which resorted to terroristic activities in answer to wage reductions, unsuccessful strikes, and discharges for union activity. Violence was generally directed against an individual mine owner or foreman who had offended some member of the society, and frequently the offending employer or his agent was murdered.

When the miners' union was crushed at the end of the strike in June, 1875, its leaders advised the members to make the best terms possible with their employers. The Mollies in the union opposed this and, by intimidation, prevented the men from returning to work. Because a riot took place when the Philadelphia and Reading Company began to operate its mines, the militia was called out, and the Molly Maguires became more aggressive. At this point a Pinkerton spy, James McParlan, who entered the anthracite region in 1873 and was accepted as a fellow miner, had secured enough information to implicate a large number of alleged members of the Molly Maguires. Arrests were made in the fall of 1875, and, with the prosecution vigorously pressed by the head of the Philadelphia and Reading, the trials continued until late in 1876. Of the twenty-four Molly Maguires finally convicted, ten were executed for murder.

⁷ Commons, *op. cit.*, II, 176.

The history of the Molly Maguires, revealing the lengths to which men might be driven by unemployment, destitution, and bitter exploitation by employers, presents an early example of the operation of the spy in the labor movement and offers an exceptional rather than a typical episode in American labor violence.

The great strikes of 1877. Depression conditions set the scene for the great railroad strikes of 1877. Severe reductions were announced to go into effect in June and July, 1877, on the Pennsylvania, New York Central, and Baltimore and Ohio railroads. Wages had already been cut and were low when this was made known. In Pittsburgh, the trainmen, under the leadership of Robert H. Ammon, began to organize secretly to resist the railroads. Plans for a simultaneous strike on the three main trunk lines did not materialize, but when Baltimore and Ohio workers walked out at Martinsburg, West Virginia, the day after the wage reduction took effect (July 17), they initiated a strike movement which spread with amazing rapidity. In addition to the Baltimore and Ohio, the Pennsylvania, the New York Central, and the Erie were affected, and cities on almost every railroad line in the country—including Pittsburgh, Alleghany City, Harrisburg, Philadelphia, Reading, Scranton, Toledo, St. Louis, Chicago, and San Francisco—experienced strikes. Thus the movement took on the appearance of a general strike. In some cities there was much disorder and violence, and in St. Louis a workers' committee was in virtual control for almost two weeks. Never before were state troops used so extensively to suppress strikes, and for the first time federal troops were called out in peacetime for this purpose. The militia, interestingly enough, could not be depended upon to fire upon the strikers, and sometimes even aided them. Early in August it became clear that the strikes could not succeed, and, in fact, they all finally ended in failure.

The great strikes of 1877 stimulated political action among workers, created greater labor solidarity, and apparently later facilitated secret organization among unskilled workers. Of greater consequence was the flood of conspiracy laws, the hostility of the courts to labor, the demand for additional and stronger armories and the reorganization of the militia, and the violent condemnations of labor in the press, all of which followed in the train of the strikes.

References and questions for this section are to be found at the end of Chapter 13.

FROM THE FOUNDING
OF THE A.F.L.
TO THE
WORLD WAR



THE "NEW UNIONISM" OF THE 1870'S

TOGETHER with the expansion of the K. of L. from the 1870's on there appeared a type of trade-unionism, fundamentally in conflict with the philosophy of the Knights, which borrowed very heavily from British sources. In this development Adolph Strasser, who had been connected with the First International, played an important part. He influenced the president of the New York local of the cigar makers, twenty-seven-year-old Samuel Gompers, a native of England who had come to America in 1862. Gompers's contacts with men like Strasser, his study of Marx, and his knowledge of English trade-unionism all swayed him when he later became leader of the American Federation of Labor.

The Cigar Makers. Convinced that their union was not organized on an effective basis, Strasser and Gompers determined to reform it, taking the so-called "new unionism" of the British labor movement as a model. They stressed the centralization of authority in the hands of the international officers, an increase in dues to permit the building up of large funds, the adoption of an extensive system of benefits in order to insure the continued loyalty of the members, and the "equalization of funds," which would give the national officers power to order prosperous locals to transfer portions of their funds to weak locals. These changes were adopted by the cigar makers

in 1879 and later, with some modifications, by other national trade-unions. With the growing concern with the everyday problems involved in attempts to better the status of the workers, the radical aspects of the original philosophy of Strasser, Gompers, and others became less important. These leaders began to emphasize the principles of "pure" trade-unionism unaffected by ideas of revolution or reform. Based upon a philosophy of wage-consciousness, it involved activities of an opportunistic character. Its primary object was to improve the status of the workers by increasing their bargaining power. Professor R. F. Hoxie has called this type of unionism "business unionism," for it had the businesslike end of securing immediate benefits for the workers and used direct methods such as strikes, boycotts, picketing, and the trade agreement. In contrast to the theoretical position of the Knights, business unionism concluded that the important thing was to improve the status of the worker now. Thus, it acted as if the workers were likely to remain workers throughout their lives, without rejecting the traditional American optimism. To transform the worker into a farmer, an independent businessman, or co-operative self-employer was not its function or goal. Where business unionism was concerned with obtaining "more now," reformist labor organizations were interested in the idealistic future. The former stressed the need of direct and businesslike methods to obtain "more now"; the latter believed that education and legislation would elevate the workers.

THE FORMATION OF THE AMERICAN FEDERATION OF LABOR

When business began to revive in 1879 the principles of business unionism were accepted by several of the national unions. The central trades councils which now appeared aided the affiliated unions in their economic activities, worked for favorable legislation, and frequently directed the political activities of the unions. They also helped to mediate labor disputes, and, during 1883 and 1884, directed some of the many boycotts which were initiated.

Allied trades councils which were also formed during this period took no part in political, legislative, or boycott activities. They served to unite the unions in an industry to promote the winning of strikes and to carry on sympathetic strikes. In general, they marked a development in the direction of industrial unionism. Still another type of city federation was formed by German trade-unions in New York City, Milwaukee, St. Louis, and other places where large numbers of Germans were employed.

National unions. In the early 1880's there existed about thirty national trade-unions, eighteen of which had survived from the decade of the 1870's, including the following important unions: the printers (organized in 1850),

the hat finishers (1854), the molders (1859), the locomotive engineers (1863), the cigar makers (1864), the bricklayers and masons (1865), the railway conductors (1868), the German typographical workers (1873), the locomotive firemen (1873), and the iron and steel workers (1876). From 1880 to 1883 national unions of bottle blowers, boilermakers, carpenters, plasterers, tailors, and other workers were organized. Most of the national trade-unions of the early 1880's were not essentially different from the unions of the 1860's and 1870's. Only five of them had benefit systems prior to 1887, and the control over local unions remained slight.

A distinguishing characteristic of the unions of the period was the predominance of foreign members. There was as a rule a larger number of Germans than native American unionists in the cities, and the Irish, British, Scandinavians, and Italians also made up important segments of the membership.

The Federation of Organized Trades and Labor Unions. The need for some common organization to unite their interests led the national trade-unions in November, 1881, to form the Federation of Organized Trades and Labor Unions of the United States and Canada, which grew out of a conference held the preceding August. Arranged by dissatisfied leaders of the Knights of Labor and by officers of some international trade-unions, the conference issued a call to all trade- and labor unions in the United States and Canada, declaring that only in a federation of trades could "proper action be taken to promote the general welfare of the industrial classes." It stated that "a national Trades-Union Congress" could prepare and lobby for labor legislation, and that "in addition to this, an annual congress of trades-unions could organize a systematic agitation to propagate trades-union principles, and to impress the necessity of protective trade and labor organizations, and to encourage the formation of such unions and their amalgamation in trades assemblies."

At the "International Trades-Union Congress" held at Pittsburgh in November, 1881, one hundred and seven delegates from the Knights of Labor, fearing that a rival organization might be formed, were present, besides representatives from eight national trade-unions, eleven central trades councils, and forty-two local trade-unions. Samuel Gompers, elected president of the convention, was also chairman of a committee to frame a constitution. The first article of the proposed constitution provided that all "trades-unions" which conformed to the rules and regulations would be eligible for membership in the federation. The K. of L. delegates objected to the term "trades-union" on the ground that it implied the exclusion of the unskilled. To meet this objection the term "trades and labor unions" was incorporated in the title of the federation. From its very beginning, the federation was brought under

the control of the national trade-unions by a provision which gave them representation in the convention according to the size of their membership, whereas the local councils were given only one vote each regardless of membership.

The second convention, held a year later, was attended by only nineteen delegates because of the absence of the Knights of Labor. The convention dealt with the tariff, the eight-hour day, and the land question, which was brought up in the form of a resolution favoring Henry George's proposals for the single tax. At the third convention, in August, 1883, twenty-seven delegates were present, and a resolution in favor of the eight-hour day was again passed.

The membership of the affiliated unions in 1884 was less than 50,000. In spite of this, and in order to gain members, the Federation decided to initiate a major campaign for the eight-hour day, and passed a resolution providing that eight hours should constitute "a legal day's labor" beginning May 1, 1886. The Knights of Labor declined the invitation to co-operate in the movement to secure the eight-hour day, and even the affiliated trade-unions were not enthusiastic.

Establishment of the American Federation of Labor. From 1881 to 1886 the Federation devoted itself principally to securing favorable labor legislation and endeavored to settle the quarrels between the national trade-unions and the K. of L. By 1886 it was apparent that its legislative achievements were quite insignificant. The K. of L. was at odds with the national unions, and the latter had become fully aware of the necessity for unity. A conference of trade-union officials, representing twenty-five organizations and called for the purpose of uniting the unions, was attended by the delegates to the Federation's convention. After effecting a permanent organization, the conference declared itself to be the first annual convention of the American Federation of Labor and appointed a committee to meet with the representatives of the Federation of Organized Trades and Labor Unions. The latter consented to merge with the new Federation.

In the new American Federation of Labor, which elected Samuel Gompers president, the national unions were made the basic units; local unions were to be members only in the case of crafts in which no national union existed. The officers were to promote legislation, organize new unions, unify all labor organizations, approve or disapprove boycotts initiated by the members of the federation, and, after investigation, raise funds in aid of strikes and lockouts. The income of the federation was to be derived primarily from a per capita tax on each member of the affiliated unions.

Nothing came of the halfhearted attempt made by the convention to settle the dispute of the national unions with the K. of L. When the Knights

became more conciliatory in 1887, the trade-unions, now more important, were not inclined to respond to its advances, and the probability of an official reconciliation became slight. With the decline of the Knights, the American Federation of Labor and its growing national unions became the predominant organizations of workers.

THE EIGHT-HOUR MOVEMENT AND THE HAYMARKET AFFAIR

Eight-hour movement. The 1884 resolution of the Federation of Trades and Labor Unions to initiate eight hours as the legal work-day on May 1, 1886, was supported by the rank and file of the organized labor movement, and by a number of radicals, including one wing of the American anarchist or social revolutionary movement. The extreme segment of the radical movement had, by 1883, taken the form of the International Working Peoples' Association, also referred to as the "Black International." This was in part the creation of the propaganda tour of Johann Most, a German anarchist who advocated propaganda by deed and who came to the United States in 1882. The two centers of the Black International were New York and Chicago. Albert R. Parsons was its foremost native-born leader.

As May 1, 1886, approached, there was some indecision among union officials as to whether they should support the eight-hour demonstration. Terence Vincent Powderly, the head of the Knights of Labor, opposed participation by the Order, but many of the members and local officers were eager to demonstrate and strike for the shorter day. Among the national trade-unions whose leaders were also uncertain about what to do, the rank-and-file sentiment favored the eight-hour movement. Eight-hour propaganda was very vigorously pressed in Chicago, where the social revolutionaries threw themselves into the movement, hoping to utilize it for their own purposes.

The advent of May 1 was awaited with considerable concern throughout the country. Although it was marked by large mass demonstrations and strikes, it passed peacefully. Chicago, however, witnessed a disturbance shortly after as a result of a strike and lockout in progress since early in 1886 at the McCormick Harvester Company. During a meeting of other workers near the plant on May 3, at which August Spies, a leading social revolutionary, spoke, McCormick workers attacked strikebreakers leaving the factory. The police were called, and in the resulting melee one person was killed and several were wounded. Some social revolutionaries immediately issued a call for a great mass meeting in Chicago's old Haymarket Square on the following night (May 4) to protest against police brutality.

The Haymarket bomb. The crowd which attended what was to have been a monster mass meeting in the Haymarket Square was disappointingly

small, never numbering more than thirteen hundred persons, and the speeches by Spies, Parsons, and Samuel Fielden, all active members of the "Black International," were far less incendiary than many which they had given before in Chicago. In the midst of Fielden's speech, it began to rain, and the crowd dwindled to about one-fourth of its previous size. Mayor Harrison, who attended to see that there was no disturbance, also left, informing the officer in charge of the police station and the police reserves near by that there was no sign of danger. As Fielden was on the point of closing, some two hundred police made a sudden and surprising appearance, and the commanding officer ordered the meeting to disperse. Suddenly a bomb was hurled at the first rank of the police, and exploded with dreadful effect. Reforming their ranks, the police began to fire, and the crowd fled. A matter of minutes, and it was over. But one policeman had been killed, six more were to die of their wounds, and perhaps a hundred persons were injured.

Hysteria swept Chicago and the country, and responsibility for the bomb-throwing was immediately laid upon the social revolutionaries or "anarchists." The Chicago police worked furiously, arresting great numbers of radicals. Of those caught in their dragnet, eight were finally brought to trial—Parsons, Spies, Fielden, Adolph Fischer, Michael Schwab, George Engel, Louis Lingg, and Oscar Neebe—charged with murder.

Mass hysteria, a prejudiced jury, a biased judge, perjured evidence, the previous activities of the defendants, and a peculiar and unjustifiable theory of conspiracy all played a part in determining the outcome of the long trial which followed. In August, all eight were found guilty, Neebe being sentenced to fifteen years' imprisonment and the others condemned to death by hanging.

The Supreme Court of Illinois affirmed the judgment of the lower court, and the Supreme Court of the United States found that there was no ground which gave it jurisdiction to review the case. Governor Oglesby of Illinois commuted the sentences of Schwab and Fielden to life imprisonment, and Lingg cheated the hangman by committing suicide in his cell. On November 11, 1887, Spies, Parsons, Fischer, and Engel were hanged.

Six years later, John P. Altgeld, then governor of Illinois, granted unconditional pardons to Fielden, Neebe, and Schwab, and in a critical review of the trial issued a damning criticism of Judge Joseph E. Gary, who had presided. This act won for Governor Altgeld, who had been prompted by a stern sense of justice, the bitter enmity of the so-called "better" elements of the country. To this day the identity of the bomb-thrower remains more or less a mystery, but the evidence that has come to light exculpates the eight accused from direct responsibility for the crime.

The Haymarket affair aroused indignation throughout the Western World, and labor organizations and progressives in Europe protested against

the execution of men who had been proved guilty of radicalism but not of murder. The episode left its mark upon the radical movement in America, created our first revolutionary and labor martyrs, inspired our first great "red-scare," and injured the organized labor movement. It did not, however, fatally affect the eight-hour movement of 1886.

Continuation of the eight-hour movement. The struggle for the shorter day continued, and, in 1888, the A.F.L. convention set May 1, 1890, as the date for a general demand for the eight-hour day. An aggressive campaign was inaugurated by the Federation, and some four hundred mass meetings took place throughout the country on Labor Day, 1889. The carpenters, always determined advocates of the shorter day, led the way in 1890, and, when the plan for a general strike was abandoned in March of that year, they were selected to make the demand on May 1. They claimed to have won the eight-hour day in one hundred and thirty-seven cities, and a nine-hour day in most other places. The miners, who were supposed to follow the lead of the carpenters the following year, were unsuccessful because of poor organization and an earlier disastrous strike. By 1891 thousands of workers, especially in the building trades, had won the eight-hour day, but not until the decade of the World War did eight hours become the standard for a large proportion of the American workers.

THE PULLMAN STRIKE

There was a decrease in industrial conflict after 1886, in which year of "upheaval" there were over 1,500 strikes involving more than 600,000 workers.¹ Not until 1894 were a larger number of workers (about 690,000) involved in strikes. The critical and bitterly fought Homestead strike was one of a series of strikes in steel which took place in 1892. Most of these were unsuccessful and virtually wiped out unionization in the plants of the larger steel companies. Two years later occurred important industrial conflicts in coal mining and the famous Pullman strike. This strike merits special attention because of the roles played by the federal government and the courts.

Causes of the strike. Before 1893 control over the operation of parlor and sleeping cars in the United States was in the hands of the Pullman Palace Car Company, which manufactured the cars at its plant in Pullman, a suburb of Chicago, leased them to the railroad companies, and kept them in repair. In that year the company's manufacturing business declined, and it announced a wage reduction. In March, 1894, many Pullman workers joined

¹ For annual strike statistics, see Florence Peterson, *Strikes in the United States, 1880-1936*. Bureau of Labor Statistics. Bulletin No. 651. Washington, D. C. 1938. Chap. II. See above, Chapter 9.

the American Railway Union, which had been organized as an industrial union for all railway workers nine months earlier. The A.R.U. grew at the expense of the railway brotherhoods, whose conservative trade-unionism it opposed. Early in May, a committee of Pullman employees, representing all the departments, asked that wages be restored. The request was refused, but the committee was promised that none of its members would be discharged for calling on the management. On the next day, however, three of the committeemen were discharged for alleged lack of work. That evening the local unions met and voted to strike at once. On May 11, twenty-five hundred men quit work, only six hundred remaining at their jobs. The company closed the plant, and did not reopen it until some months later.

In June the American Railway Union held a convention in Chicago. It proposed to the Pullman Company, which had already rejected arbitration on the ground that there was nothing to arbitrate, that the question of arbitration itself be submitted to an impartial commission. The company, however, refused to receive any communication from the union, and on June 21 the convention, under instructions from the local unions, voted unanimously that members of the A.R.U. should not handle Pullman cars beginning on June 26 unless the Pullman Company had consented to arbitration by that time. On the next day the General Managers' Association, which represented twenty-four railroads entering Chicago and dealt with labor problems, protested the proposed boycott and announced that it would act to maintain existing contracts with the Pullman Company. When the boycott commenced on June 26, the Association assumed control for the railroads.

The wage reductions and blacklisting suffered by railroad employees throughout the country also played a part in the decision to boycott Pullman cars. In a few days the boycott had spread over the entire central and western United States, and, when it appeared that the railroads would refuse to detach Pullman cars, it developed into a strike, since the railroad workers refused to operate the trains if Pullman cars were attached to them.

The strike. Two days after the strike began, the Post Office Department at Washington was informed that the mails were completely obstructed at some points in the West; the strikers had refused to permit trains to which Pullman cars were attached to move over the lines. Thereupon the Attorney General of the United States, Richard Olney, instructed the district attorneys in the affected regions to see to it that trains carrying United States mails were not obstructed, and ordered them to have recourse to the United States courts to accomplish this. On June 30 the United States district attorney at Chicago, reporting that mail trains had been stopped in the suburbs of the city and that apparently all trains would have to be stopped, recommended that the United States marshal at Chicago be empowered to employ special

deputies to protect the mails. Authorization for this was immediately granted by Olney, who also appointed Edwin Walker, a well-known railroad attorney, then counsel for the Chicago, Milwaukee, and St. Paul Railroad, to conduct the government's case against the strikers. Olney recommended that an injunction, based on the general principles of law and upon the Sherman Anti-trust Act of 1890, be obtained against the strikers.

The injunction. After conference with a number of lawyers for the railroads, the attorneys for the government drew up a bill in equity based upon the law prohibiting obstructions to the mail and upon the Sherman Act, and presented a petition for an injunction to the federal district court in Chicago on July 2, which immediately issued the most sweeping injunction ever handed down by a federal court up to that time. The injunction order prohibited Eugene Debs, president of the American Railway Union, the other officers of the union, and "all other persons whomsoever" "from in any way or manner interfering with, hindering, obstructing, or stopping," any of the business of the railroads entering Chicago, and "from compelling or inducing or attempting to compel or induce, by threats, intimidation, persuasion, force or violence, any of the employees" of the railroads to refuse to perform their duties as employees. Any "act whatever in furtherance of any conspiracy or combination to restrain" the railroad companies in the "free and unhindered control and handling of interstate commerce" was also prohibited.²

Edwin Walker on July 2 informed the government that he thought it would require troops to enforce the injunction, and, when on that day the United States marshal attempted to read the injunction to a crowd of strikers in a Chicago suburb, he was hooted down. He, too, reported to the Attorney General that federal troops were needed, and his request was approved. On July 3 troops stationed near Chicago were ordered by the direction of President Cleveland to enforce the orders of the courts. Arriving in Chicago on July 4, the troops spent the next few days in suppressing the violence of irresponsible hoodlums who had remained in the city after the close of the Columbian Exposition of 1893 and in aiding the federal marshal in serving injunction writs.

The Chicago injunction was served on President Debs and other officers of the American Railway Union several days after it was issued. This, together with the activities of the state and federal troops and the United States deputies, was not in Mr. Walker's opinion enough to end the strike. On July 2, he also recommended that indictments be secured against Debs and others for violation of the federal law. Olney approved this procedure, and on July 10 the federal grand jury at Chicago returned indictments against the officers of

² *In re Debs*, 64 Fed. Rep. 724. Injunctions similar to this were obtained by federal attorneys in other parts of the country.

the union, charging them with complicity in obstructing the mails and in hindering interstate commerce. Debs and his fellow officers were arrested on the same day and were released on bail. A week later they were charged with contempt of court for violating the injunction of July 2. Refusing to offer the bail fixed at \$3,000, they were committed to jail, but they were not tried on the contempt charge until the middle of the following December. They were then found guilty and sentenced to jail for terms varying from three to six months. Later, trial on the indictments returned by the federal grand jury was begun, but the federal attorneys had the case dismissed. In January, 1895, the strike leaders who were in jail for contempt of court appealed to the United States Supreme Court, which, on May 27, 1895, denied the appeal.

Long before this the strike had ended in defeat. When the Pullman plant reopened, a convention of the American Railway Union recommended to its local members that the strike be called off at once.

Significance of the Pullman strike. The activities of the government in bringing the strike to a close are open to severe criticism. Walker, for many years an important official of a great railway system, was, as special attorney, theoretically supposed to represent not only the interests of the federal government, but of all classes of citizens. But he obviously represented the interests of the railroads. Furthermore, most of the deputies whose appointment was authorized by the Attorney General were selected by the General Managers' Association and the railroads, which armed and paid them. Many of these special deputies were irresponsible persons who were frequently reported drunk and who were often arrested while on duty for indiscriminate shooting. Even Mr. Walker protested on July 9 to Attorney General Olney that the United States marshal was "appointing a mob of deputies that are worse than useless." Especially important is the fact that the federal government sought an injunction against the strikers and obtained indictments on the ground that they were guilty of violating the Sherman Antitrust Act. That Act, long before it was effectively used against a business monopoly, was here invoked by the government of the United States against a strike. Throughout the strike the federal government put itself in the position of aiding the General Managers' Association and the railroads to defeat the strikers.

THE FEDERATION AND THE SOCIALISTS

From its very first days the socialists tried without permanent success to influence the A.F.L. Socialist political efforts during the 1890's took the form of the Socialist Labor party, founded in 1876 and later led by Daniel De Leon. In 1899, however, his policies led to a split in the ranks of the party, and a new socialist party was formed in the following year.

Gompers and other leaders of the national trade-unions were opposed to

an independent political party. The federation and its affiliated organizations emphasized the need of fighting labor's battles on the economic front, and argued that more could be accomplished by supporting one or the other of the old parties than by organizing an independent labor party. The increasing attention paid to economic activities and the growing conservatism which naturally accompanied the continuance of the old leaders in important trade-union positions were in part manifested by the opposition to the radical philosophy advocated by the socialists. From that day to this the A.F.L., regardless of the contrary positions sometimes taken by its affiliated unions, has generally stood adamant against independent political action by labor, and has fought the activities of socialists—and in postwar years of communists—within the trade-union movement.

EMPLOYERS' ASSOCIATIONS AND TRADE AGREEMENTS

Although associations of employers go back to the first decade of the nineteenth century, it was not until 1886, when the Stove Founders' National Defense Association was formed, that a relatively permanent employers' association was established. Organized to resist the demands of the workers, it attempted to put into effect a nation-wide labor policy. It and the Molders' Union were so evenly matched that disputes in the plants of the association rarely took place during the next four years. Following a dispute in 1887, negotiations were carried on for the purpose of drawing up a national trade agreement, the initiative being taken by the employers' association. Finally the national convention of the union appointed a committee in 1890 to meet a committee of the association. The resulting conference of March, 1891, produced a complete trade agreement affecting the stove industry.

This was not the first important American trade agreement, for in 1866 the iron and steel workers, then very strongly organized, worked under a national trade agreement. By the end of the 1890's the trade agreement had become widely accepted as a method of stabilizing the relations between labor and employers, and a number of employers' associations had been formed to deal with the unions. In later years the trade agreement became the basic institution of a stable trade-union movement.³ The employers' associations organized in a great many industries not infrequently fought the unions on all fronts and refused to recognize them for purposes of collective bargaining.⁴

THE COAL MINERS—THE ANTHRACITE STRIKE OF 1902

The United Mine Workers. Since the turn of the century, the coal miners have assumed a position of importance in the American labor move-

³ For a full discussion of the trade agreement, see Book III, Chapter 18.

⁴ For employers' association, see Book IV, Chapter 26.

ment. Early in the 1890's the United Mine Workers was organized upon the basis of the old National Federation of Miners and Mine Laborers. Some of the locals at first restricted their membership to miners, but before long the United Mine Workers as a body attempted to take in all workers, whether miners or not, who worked in or about the mines. After organizing from late in 1899 in the anthracite districts of Pennsylvania the union had only eight thousand members among the anthracite workers by the summer of 1900. In July of that year the operators were asked to meet representatives of the union in order to formulate a wage scale to be incorporated in a trade agreement. The operators refused to grant the request, and in September large numbers of men went on strike. Within two weeks fully 90 per cent of the anthracite miners were idle, but the operators at first refused to consider a settlement. With the presidential election of 1900 approaching, however, Mark Hanna, then chairman of the National Republican Committee and influential among the operators, feared the effect of the strike upon President McKinley's candidacy, and brought pressure to bear to end it.

Early in October the operators posted a notice of a 10 per cent increase in wages which the miners did not regard as acceptable. There was no stipulation that the increase would remain in effect for any definite period. Several weeks later the operators offered to increase wages 10 per cent and to correct other grievances of the miners. These concessions were accepted, and the workers returned to work. While the union did not receive actual recognition, the successful strike resulted in a large increase in its membership.

After considerable difficulty, President Mitchell of the United Mine Workers finally arranged for a joint conference with the operators in 1901, in which an understanding was reached that the wages and working conditions obtained the previous year should be continued until the following April. With the approach of that date the union asked the anthracite companies to attend a joint conference in March for the purpose of reaching a trade agreement. All of the operators refused to attend. They announced instead that the wages in effect would be continued for an additional year. Meanwhile the miners demanded a 20 per cent increase in piece rates and a corresponding increase for men paid by the day in the form of reduction in hours of work from ten to eight, unaccompanied by a cut in the daily wage. Asked to meet representatives of the union, the anthracite operators refused. In the meantime the officers of the union had been given power to call a strike. A compromise proposal by the workers to accept a 10 per cent increase in wages and nine-hour day was also rejected.

The strike breaks. When the operators persisted in turning a deaf ear to all proposals for meeting the miners' representatives and for submitting the dispute to arbitration, the officers of the union called a strike, to begin on

May 12. From that date nearly 150,000 miners, including almost all of the persons engaged in the industry, remained on strike for a period of five months.

With the approach of fall and cold weather, public indifference to the strike gave way to demands that something be done. Public officials in the Northern states and politicians worried about the coming elections appealed to President Theodore Roosevelt to use his good offices to bring about a settlement. On October 3 representatives of the operators and the miners met the President in response to his request. President Mitchell of the miners proposed that the matter be submitted to the arbitration of a board selected by the President. To this suggestion the operators at first were unresponsive, declaring that if the government kept order, the operators would undertake to run the mines. Although the conference was an apparent failure, the operators lost much public support because of their refusal to arbitrate. President Roosevelt, with Elihu Root as intermediary, finally brought enough pressure upon the operators through J. Pierpont Morgan to induce them to agree to arbitration. An arbitration commission satisfactory to both parties was appointed by the President. The anthracite miners voted to accept arbitration and the strike ended on October 23.

The work of the commission. By the decision of the commission the following March, wages were increased 10 per cent (retroactive to the previous November 1); a board of conciliation, representative of the operators and the miners, was set up to hear disputes which could not be settled locally, the awards of which were to be final and binding; checkweighmen were to be employed whenever a majority of the miners so requested; a sliding scale of wages related to the price of coal in New York was to be adopted; and there was to be no discrimination because of membership or nonmembership in a union. This award was to remain in force until the end of March, 1906.

The settlement of the anthracite strike of 1902 constituted a great victory for the miners, although their demands were not fully granted and the union was not recognized by the operators. The prestige of the United Mine Workers increased, and the union entered upon a career of great importance in determining wages and labor conditions both in the anthracite and the bituminous fields. For the first time in our history a President of the United States played an active part in securing the peaceful settlement of a strike.

. THE INDUSTRIAL WORKERS OF THE WORLD

Origins of the I.W.W. In the last decade of the nineteenth century, the West was responsible for a characteristic and interesting development in the labor movement. The Western Federation of Miners, organized in May,

1893, attempted to include employees in the metal mines and smelters. It joined the A.F.L. in 1896, and withdrew during the next year, for between the two organizations there was a basic conflict of opinion, method, and structure. The miners believed in industrial unionism and, holding that aggressive tactics alone could aid them, were ready to resort to violence and even to arming themselves against their employers and the public authorities.

In 1898, the Western Federation of Miners, in an effort to expand and to set up a labor organization which would function throughout the West, formed the Western Labor Union, later called the American Labor Union. At about the same time William D. Haywood, popularly known as "Big Bill" Haywood, became the head of the Western Federation, which became more militant and radical in character in the years to follow. Their experience with employers and with deputies and state and federal troops, who used force against them, led the members to feel that only a new economic system could secure justice for the workers. Furthermore, the fact that they generally did not possess the family or property ties which make for social and economic stability tended to intensify their radical outlook.

In 1892 Daniel De Leon gained control of the Socialist Labor party. He regarded the trade-unions as the most important agencies for bringing about a socialist society and thus opposed trade-union officials who looked to their organizations to secure only the immediate improvement of the workers' condition. Failing to gain control of either the K. of L. or the A.F.L., De Leon in December, 1895, brought together a number of unions in New York City and organized the Socialist Trade and Labor Alliance. From that time on, as his creature, the Alliance carried on a campaign of vituperation against Gompers and his practical-minded colleagues.

De Leon, an extreme doctrinaire, wielded enough influence in the socialist movement to bring about a split in the Socialist Labor party. Many trade-unionists in that party held that the unions could be made radical by "boring from within," that is, by remaining in their organizations and exercising radical influences as members. The Socialist Trade and Labor Alliance, which Gompers called a "dual union," however, was an organization functioning in opposition to the established trade-unions. After the "boring-from-within" socialists were driven out of the Socialist Labor party, De Leon turned upon a number of other recalcitrant groups. As a result, many American socialists, including groups led by Morris Hillquit and Eugene Debs, formed the Socialist party in 1901. The Socialist Labor party declined in importance, and the new party became the leading socialist political organization in the United States until after the World War.

Founding the I.W.W. The belief in the necessity of an organization functioning in opposition to the American Federation of Labor resulted in a

convention, held in Chicago in June, 1905, and attended by representatives of dissatisfied A.F.L. unions, the Western Federation of Miners and its American Labor Union, the Socialist Trade and Labor Alliance, and a heterogeneous group of individuals, including intellectuals, disgruntled unionists, and ordinary wage earners. None of the national unions connected with the A.F.L. was represented, and the Western Federation of Miners was the only well-organized group. "Big Bill" Haywood, De Leon, Debs, and Mother Jones were among the individuals important in the labor movement who were present. This convention gave birth to the Industrial Workers of the World, whose character is revealed by this declaration from its preamble:

"The working class and the employing class have nothing in common. There can be no peace so long as hunger and want are found among millions of working people and the few, who make up the employing class, have all the good things of life." Later the following was added: "Between these two classes a struggle must go on until the workers of the world organize as a class, take possession of the earth and the machinery of production, and abolish the wage system." The I.W.W. thus adopted a definitely revolutionary philosophy, and was in bitter opposition to the leaders, principles, and activities of the A.F.L. Advocating industrial unionism, it hoped to organize all workers in a relatively limited number of great national industrial unions.

Philosophy of the I.W.W. The I.W.W. was the American equivalent of the European syndicalist movement from which it later borrowed much in the way of theory and doctrine. Syndicalism, in some respects an outgrowth of Marxism, is distinguished among revolutionary philosophies in part by its advocacy of direct action and the general strike. By direct action is meant anything which has the effect of imposing obstacles to the employers' conduct of industrial operations, such as aggressive and unannounced strikes, violence and the destruction of the employers' property, and "the conscientious withdrawal of efficiency," that is, restriction of output. The idea of the general strike is based upon the theory that, once all wage workers are organized in a small group of highly centralized industrial unions, the strike order will be universally obeyed, and the workers will lay down their tools. It will then be comparatively simple for the workers to establish a co-operative society. Anarchist influence in syndicalist thought is most clearly seen in the rejection of everything that has to do with political activity.

Dissension in the I.W.W. While syndicalist ideas were readily accepted among the Western Federation of Miners, opposition to political action was not approved by the socialist groups led by Debs and De Leon. All parties uniting to form the Industrial Workers of the World were, however, in agreement in their opposition to capitalism, belief in a workers' society, and hatred

of the A.F.L. Before long the politically minded socialists clashed with the syndicalist groups in the I.W.W., and by 1908 the differences between them had become so great that the De Leonites withdrew and formed a rival I.W.W. with headquarters in Detroit. In 1915 the "Detroit Branch," as it was called, changed its name to the Workers' International Industrial Union.

The Western Federation of Miners was almost destroyed after a ruinous strike in the Cripple Creek district and in the gold fields in 1907, and what remained of the union shortly came to be led by bitter opponents of Haywood and the I.W.W. The federation withdrew from the I.W.W. and in 1911 joined the A.F.L. By 1916, when it changed its name to the International Union of Mine, Mill, and Smelter Workers, it had become a respectable industrial union.

I.W.W. strikes. Beginning in 1909 the I.W.W. conducted a number of important strikes in the East, invading fields which had been largely neglected by A.F.L. unions. The first of these strikes in 1909 was against the Pressed Steel Car Company of McKees Rocks, Pennsylvania, which had introduced a new system of wage payment. After the company closed its plant, picketing and attempts by the authorities to control the strikers led to violence, and a great many deputies and state constables appeared on the scene. Their presence immediately resulted in rioting and bloodshed. The strike had begun in July, and in the middle of August the I.W.W. entered the conflict. The morale of the strikers was improved, funds were raised from various sources to support them, and toward the end of August the company surrendered on every count. Although the I.W.W. did not actually lead the strike, its aid in a situation avoided by other labor organizations gave it much prestige among unorganized workers in the East.

The fight for free speech. The struggle for free speech in which the I.W.W. engaged from 1909 to 1912 in the West was a practical necessity for the organization, because its agitational and propaganda activities largely took the form of street meetings. The only practical means of interesting migratory workers in the I.W.W. was to recruit them when they came to the city looking for jobs. Since the workers were frequently misled and cheated by employment agencies, the neighborhood of such agencies offered the I.W.W. an effective spot for their activities.

The first important fight in this free-speech campaign, carried on in Spokane, began with the slogan "Don't Buy Jobs," and the employment agencies thus threatened countered with the formation of the Associated Agencies of Spokane. When the municipal council passed an ordinance against street speaking, the I.W.W. was notified that street meetings were to cease on the first of January, 1909. The notice was ignored, and I.W.W.

demonstrations resulted in damage to a number of the agencies. In spite of the prohibition the I.W.W. carried on its campaign, and a large number of its members were arrested. It then ceased to violate the ordinance, which applied to all sorts of organizations, until the Salvation Army secured an exemption from its application. Stirred by this obvious discrimination, the I.W.W. held street meetings in the early fall of 1909. One of its organizers was arrested for violating the antistreet-speaking ordinance. While the case was pending, the I.W.W. decided to carry on meetings regardless of the outcome of the trial.

Early in November a free-speech fight was undertaken in earnest. Bands of I.W.W. members proceeded to hold meetings. As soon as one speaker was arrested another took his place. Members came from outside the city, and within ten days three hundred men had been imprisoned. Sent to the rock pile, they refused to work, and when they were put on a bread and water diet, they countered with a hunger strike.

Interest in the free-speech fight became widespread throughout the West, and the I.W.W. won support from outside its ranks. Finally, in March, 1910, the city authorities agreed to permit street meetings and guaranteed the right of the I.W.W. to sell its literature. Thereafter similar struggles took place in Kansas City, Fresno, San Diego, Aberdeen, and Victoria, in British Columbia. Its courageous and determined efforts to secure the right to hold meetings and its assistance to exploited laborers in the West won for the I.W.W. many members among workers who had previously been uninfluenced by union efforts.

The Lawrence strike. The most important I.W.W. strike in the East took place in the textile city of Lawrence, Massachusetts, where the textile workers were for the most part immigrants. They had not been benefited by union activities, and the organizing campaigns of the United Textile Workers had not been strikingly successful. Lawrence was the center of operations of the American Woolen Company, which in 1912 put into effect a reduction in wages proportionate to the reduction in hours required by law when the limit for women was cut from fifty-six to fifty-four per week. Wages were already low, and, at the close of 1911, with the mills running full time, the average wage received by the twenty-two thousand employees in the mills was only \$8.76 per week. When the distribution of pay envelopes revealed this reduction, a strike immediately broke out. Before long more than twenty-five thousand workers had walked out.

In response to a request, the I.W.W. sent Joseph Ettor, a member of its general executive board, to Lawrence to take command of the strike. Picketing demonstrations carried on before the two large groups of mills which were still operating led to the first clash with the police and the militia. The Com-

missioner of Public Safety declared that the soldiers would shoot to kill. On January 16, 1912, the mills attempted to reopen under the protection of the police and the militia. Pickets came out but were driven back by bayonets. At that point Governor Foss directed a State Board of Arbitration to intervene. This board found Ettor willing to meet the employers but unwilling to accept arbitration, while William M. Wood, the president of the American Woolen Company, refused to meet any strike committee. Soon the strikers were joined by a considerable number of the skilled and better-paid American operatives.

At the end of January one of the largest demonstrations of the strike took place, after which a procession was formed to parade through the business district. The militia refused to permit the strikers to pass by one of the mills. Ettor controlled the demonstrators, however, and peace was maintained. But on the same day a clash occurred, and in the firing a woman striker was killed. The city council turned over control of affairs to the officers of the militia. Two days later Ettor and Arturo Giovanitti, a poet and the editor of a radical Italian paper, were arrested as accessories to the murder of the woman striker. These arrests, however, did not hinder the strike, and Bill Haywood immediately took charge of its conduct.

During February the I.W.W., utilizing pointed means, aroused public sympathy and brought in funds to support the strike. Finally, on March 1, a number of the mills announced a 5 per cent wage increase and their willingness to meet with the strike committee, but the latter insisted upon a 15 per cent increase. On March 12 the American Woolen Company offered increases ranging from one to two cents an hour and time and a quarter for overtime, and promised not to discriminate in re-employment. This was accepted, and on March 13 the walkout came to an end in most of the mills. By the end of the month all of the mill owners had fallen in line. Meanwhile the case of Ettor and Giovanitti aroused much attention. Their trial took place later in the year, and they were acquitted by the jury.

The I.W.W. and the War. The brief depression of 1914, which accompanied the outbreak of the World War, put an end to the militancy of the unskilled workers in the East. In 1915, the I.W.W., shifting its attention westward, attempted to organize the agricultural workers in the Middle West and in 1916 turned to the workers in the lumber camps and the metal mines. The entrance of the United States in the World War, however, produced an atmosphere which endangered the lives of the I.W.W. organizers in small western communities. Organization in the lumber camps was answered by the formation of a rival union, the Loyal Legion of Loggers and Lumbermen, initiated by the employers with the approval of the government. This organization had enrolled 125,000 members by 1918. Throughout the West

the I.W.W. encountered deportations and violence. On August 1, 1917, Frank H. Little, a member of the general executive board, was dragged from his room at the point of a gun and hanged from a railroad trestle on the outskirts of Butte. The I.W.W., as a revolutionary organization, opposed the war and its conduct and in consequence suffered from the hysteria of patriotism which swept the country.

In the fall of 1917 agents of the United States Department of Justice raided I.W.W. headquarters and arrested many members of the organization for the violation of the Federal Espionage Act. Early in 1918 one hundred and five I.W.W.'s were arraigned in the Federal District Court of Chicago and charged with conspiracy "to prevent, hinder, and delay the execution of the Espionage Act and other war acts," to injure citizens selling munitions to the government, to induce persons not to register for the draft, to persuade soldiers to desert the army, to cause insubordination and disloyalty in the United States forces, and to defraud employers of labor by circulating propaganda through the mails. In August, a jury returned a verdict of guilty on all but the last count against one hundred defendants. Fifteen received sentences of twenty years, thirty-five were sentenced for ten years, thirty-three for five years, and twelve for one year and a day, the remainder being given nominal sentences. In addition, Judge Landis fined the defendants a total of \$2,300,000. Elsewhere in the country other I.W.W. members suffered comparable punishment.

Decline and significance of the I.W.W. This activity of the federal government put an end to the effectiveness of the I.W.W., and after 1918 the organization ceased to be important in the American labor scene. The leadership of the revolutionary unionists in this country was taken over by the communist unions. In some places, small I.W.W. groups occasionally carried on propaganda and made their influence felt in time of dispute, but the organization itself no longer functioned actively.

The Industrial Workers of the World had a significance far greater than its maximum membership of one hundred thousand would indicate. It crystallized opposition to the activities and philosophy of the A.F.L.; it appealed to a group of migratory, homeless, and badly exploited workers who had not benefited from the activities of trade-unions; it demonstrated a technique for organizing the polyglot thousands of unskilled in our major industries; it showed that any group of workers, properly approached, might be induced to sacrifice immediate interests for the possibility of permanent improvement; it revealed that a revolutionary organization could carry on strikes in a practical fashion. Finally, it was a goad to the American labor union leaders who had neglected to organize the workers most in need of the protection of trade-unionism.

Its decline was due to more than the campaign of bitter prosecution by the public authorities. Its revolutionary philosophy brought it into conflict with the authorities and important groups of the middle and the working classes. Its unrealistic belief that America was ripe for revolution led it to assume a position which in the end brought about its undoing. Its disbelief in the trade agreement, its unwillingness to deal with the employers on a continuous basis, and its disposition to stress the exciting, the dramatic, and the emotional aspects of the labor scene for propaganda purposes caused it to neglect an industry after a strike had been won. Essentially a revolutionary organization, the I.W.W. lacked the stable basis of a policy of collective bargaining which, resulting in the establishment of permanent machinery to enforce trade agreements, insures the maintenance of gains won by means of strikes.

THE GARMENT WORKERS

Early organization. The history of unionism in the garment field is of particular interest and value for the student of American labor. Short-lived organizations in the clothing industries go back to the 1870's. The early unions were to a large extent controlled by Jewish clothing workers. Unsanitary sweatshops, extremely low wages, and insecurity of the job characterized working conditions in the industry. In 1888 the Jewish workers in New York City, most of them connected with the clothing industry, organized the United Hebrew Trades. Three years later the United Garment Workers of America was formed. This organization was from its beginning controlled by native nonsocialist workers, and serious friction developed between them and the leaders of the socialistic United Hebrew Trades. In 1900 a number of local unions of workers in the women's garment industry formed the International Ladies' Garment Workers' Union, which, following the lead of the United Garment Workers, became part of the American Federation of Labor. Unionism in the clothing industry was largely restricted to New York City during this period.

Strikes among Ladies' Garment Workers. The first great wave of organization in the clothing industry was initiated by the strike of shirtwaist makers in New York in the winter of 1909-10. This developed into a general strike of ladies' garment workers in New York City in October. On the first day of the general strike about fifteen thousand workers, most of them girls of Jewish and Italian parentage, walked out. The strikers were without union experience, but they received much help and financial aid from various labor organizations in the city. Brutal treatment of the strikers by the police was balanced by extensive public sympathy. The employers' association offered concessions to the strikers at the close of the year but refused to guarantee to

re-employ all of the strikers or to recognize the union. This offer was rejected, and in January, 1910, the union offered to submit to arbitration. Now the employers' association refused, and the union then proceeded to secure settlements with individual employers. By the middle of February, when the strike came to an end, 357 establishments had made agreements with the union.

After the shirtwaist makers' strike came the strike of cloak makers in June, 1910, brought about by sweatshop conditions and continuous wage reductions. With the International Ladies' Garment Workers' Union taking the lead, some fifty thousand workers finally struck to obtain the abolition of subcontracting, the equal distribution of work during the slack season, the forty-eight-hour week, and union recognition. The employers' association determined to fight to the bitter end, but the smaller firms in the organization feared a long strike. Thus when the New York State Board of Mediation proposed a conference with the union officials, the employers' association was compelled to agree to attend.

The principal points of contention were the recognition of the union and the closed shop. The employers were willing to discuss all grievances with the men if the union withdrew the demands for recognition, for a closed shop, and a written contract. The union refused and continued to sign up smaller shops. By July 21 it claimed that some 22,000 workers had gone back to work as a result of individual settlements.

In order to break the deadlock Louis D. Brandeis attempted to mediate the differences between the parties. He was asked by both sides to act as chairman of a joint conference, at which a complete difference of opinion about the closed shop immediately appeared. Mr. Brandeis proposed as a means of settlement that the preferential union shop be adopted. Under such an arrangement union men were to be given preference when jobs were available, provided their ability was equal to that of the available nonunion workers. The union at first rejected the compromise proposal, and the struggle was resumed.

The Protocol of Peace of 1910. Early in September, however, the union officers accepted a proposal for settlement which was formally signed by both parties and became known as the Protocol of Peace. It provided for the abolition of homework and subcontracting, and for the adoption of the six-day week, weekly paydays, the fixing of piece rates by the employer and a committee of the workers, a work-week of fifty hours, and the preferential union shop. The Protocol established a Joint Board of Sanitary Control for the purpose of improving health conditions in the factories. A board of arbitration, representing the employers, employees, and impartial persons chosen by the two parties, was set up to consider major grievances and render final decisions. In addition, provision was made for a committee of grievances,

representing each side, which was to consider and attempt to settle minor disputes.

The cloak makers' strike of 1910, which gave immediate prestige and power to the International Ladies' Garment Workers' Union, showed that immigrant workers could be effectively organized. It resulted in great improvements in working conditions, and in methods of fixing wages. It led to the creation of machinery for settling disputes of the utmost importance in establishing "constitutional government in industry." Present-day working conditions in the industry and methods of settling disputes still bear the imprint of the remarkable advances accomplished by the strike of 1910.

The men's garment industry. In the same year the clothing workers in the men's garment industry of Chicago rebelled against sweatshop conditions. The largest firm in the Chicago industry, Hart, Schaffner and Marx, manufactured garments within its own plants. The merchant-capitalists, who had work done for them by smaller contractors, were organized in the Chicago Wholesale Clothiers' Association. The sharp competition between the large manufacturers and the merchant-capitalists meant constant wage reductions for the workers. The revolt began in September, when a foreman in one of the Hart, Schaffner and Marx shops reduced the piece rate for a particular operation.

The great strike of 1910. In October the management refused to restore the previous rate, and twelve hundred workers immediately went on strike. The walkout spread rapidly. Although the officers of the United Garment Workers were skeptical of the success of this strike of unorganized immigrant workers, the local union presented demands for the recognition of the organization, a wage increase, time and a half for overtime, and respectful treatment by foremen and other executives. When the employers refused to meet the union committee, the United Garment Workers, realizing that the operatives were in earnest, called a strike in all nonunion shops in Chicago. Forty-one thousand workers responded, and the industry was completely paralyzed.

An agreement with Hart, Schaffner and Marx concluded by the president of the United Garment Workers was so unsatisfactory that it was rejected by the strikers, who lost confidence in the union's executives. Their request made to the Chicago Federation of Labor to form a new strike committee was granted. The unions of Chicago aided the strikers and provided them with funds. By the end of November meetings between representatives of the union and the firm began. An agreement was drawn up which provided that all strikers be rehired. The Wholesale Clothiers' Association, however, refused to carry on negotiations, and the strike continued, marked by violence and a number of killings. Finally Hart, Schaffner and Marx negotiated an

important agreement with the union (January 14, 1911) which provided that all former workers be rehired within ten days after the agreement was signed, that there be no discrimination against members of the union, and that an arbitration committee of three be appointed to decide all grievances. Early the next month, although concessions had not been granted, the officers of the national union called off the strike in the plants of the Wholesale Clothiers' Association and told the operatives to resume work. This meant the end of the strike on all fronts and did not endear the United Garment Workers to the clothing workers of Chicago.

Significance of the strike settlement. The arbitration committee established by the Hart, Schaffner and Marx agreement granted improved sanitary conditions, equal distribution of work in the slack season, the establishment of a system of handling grievances, and the right of an employee to appear or to be represented before a grievance committee. Wages were increased 10 per cent, minimum rates were established for pieceworkers, and a fifty-four-hour week was put into effect. Another consequence of the agreement was the establishment of a labor complaint department by the firm. In March, 1912, the two parties agreed to name a committee of five members, one of whom was to be a neutral, to decide all disputes and to approve all rates. Appeals from its decisions were to be made to a "trade board" of eleven members, made up, except for the chairman, of Hart, Schaffner and Marx employees. The trade board was to have jurisdiction over all matters in dispute arising from the interpretation of the contract. Further appeal might be made to a board of arbitration. Under this setup the office of the impartial chairman of the trade board assumed great importance, for it was he who finally decided issues. Before long the trade board came to consist only of an impartial chairman. With the expiration of the agreement in 1913, the union demanded the closed shop, but the preferential union shop was finally adopted.

The Amalgamated Clothing Workers. Meanwhile difficulties were developing in the national union, and when the national officers refused to seat a number of opposition delegates at the 1914 convention, the latter walked out of the convention hall. Meeting in another building, they declared that their meeting constituted the regular convention of the United Garment Workers of America, and elected as president Sidney Hillman, who had been the leader of the Hart, Schaffner and Marx strike in 1910. After failing to win recognition as the United Garment Workers, the seceders, in December, 1914, formally set up an independent union under the name of the Amalgamated Clothing Workers of America.

The 1911 joint agreement with Hart, Schaffner and Marx introduced a

system of "constitutional government" in the men's clothing industry which closely resembled that established the year before by the Protocol of Peace in the ladies' garment industry. The Chicago unionists produced an organization which has since assumed a place of major importance in the American labor movement and has won respect for its progressive and effective policies.

SCIENTIFIC MANAGEMENT

Toward the end of the prewar period the development of the "technique of scientific management" of Frederick W. Taylor⁵ caused American unionists much trepidation concerning the future of their organizations and the status of the workers. In 1911 Taylor's ideas were given widespread publicity in connection with the request of a number of important railroads for increases in rates. On that occasion Mr. Louis D. Brandeis pointed out that the adoption of the methods of scientific management would so reduce costs of operation that it would not be necessary to increase railroad rates.

The spread of Taylorism seemed to the unions to threaten their very existence. Taylor had himself declared that under scientific management unions were unnecessary, since there would be no more reason for arguing about rates of pay which had been scientifically determined than there would be for disputing when the sun might rise on a given day. Unions of skilled craftsmen realized that the widespread adoption of Taylor's methods in manufacturing industries employing skilled mechanics would result in such a subdivision of tasks that the old-time skills, acquired by dint of much sacrifice and long apprenticeship, would become valueless to the workers, who would fall to the status of unskilled laborers. They could point out that in numerous plants the adoption of the new techniques meant a great increase in the amount of energy required of the workers, as well as overwork, fatigue, and excessive strain. The unions asserted that in many instances the wages of the workers had actually decreased after the adoption of the new methods.

During the war years liberal-minded employers and employment directors became aware of the necessity of safeguarding the interests of the workers against the cruder aspects of scientific management. They desired to keep their workers contented and came to believe that a concern for the workers' welfare brought results in dollars and cents apparent in improved morale and increased productivity. Thus scientific management may be held to be indirectly responsible for the development of personnel administration, which since 1916 has become a thoroughly established part of the technique of management in American industry.⁶

⁵ See Chapter 21.

⁶ See Chapter 22.

LABOR AND THE COURTS

Labor and the Sherman Act. The significance of the courts for labor has already been indicated and it has been seen that the sweeping federal injunction issued in 1894 against the officers and members of the American Railway Union was in part based upon the violation of the Sherman Anti-trust Act. Not until 1908, however, when it decided the famous case of *Loewe v. Lawlor*, generally referred to as the *Danbury Hatters' Case*,⁷ did the Supreme Court of the United States pass upon the applicability of the Sherman Act to the acts of labor unions. A nation-wide campaign of the Brotherhood of United Hatters of America to secure the closed shop, which began in 1897, was so effective that by 1903, 187 firms were operating under closed-shop conditions, with only 12 remaining nonunion. These successful results were in part brought about by a system of highly organized boycotts against nonunion hats. In 1902 the firm of D. E. Loewe and Company, in Danbury, Connecticut, received a demand from the union that it operate under closed-shop conditions. When it refused, 250 employees went on strike, and a secondary boycott of the firm's product was soon begun. The union secured the co-operation of the A.F.L. as well as the aid of other labor organizations in the towns in which the Loewe Company's hats were sold. Organizers traveled the country, urging unionists and merchants not to buy Loewe hats.

The company estimated that it had suffered net losses of over \$88,000 by 1903 as a result of the boycott and in August of that year sued the officers and members of the United Hatters for damages under the Sherman Act, carrying the case to the United States Supreme Court. On February 3, 1908, the Court declared that the acts of labor unions, if they involved restraint of trade or commerce among the states, were covered by the Sherman Act. The Court asserted that the members and officers of trade-unions might be held responsible for injuries sustained in connection with violations of the act. It held further that Congress clearly intended that the Sherman Act should be applicable to combinations of labor as well as to those of capital. With this decision the case was remanded to the lower court. The final judgment against the officers and members of the union, which amounted to \$252,000, was not approved by the Supreme Court⁸ until January, 1915.¹⁰ Only the fact that the trade-unions raised funds to pay the judgment saved the members of the union the loss of their homes and other property.

⁷ 208 U. S. 274 (1908).

⁸ *Lawlor v. Loewe*, 235 U. S. 522 (1915).

The Clayton Act. The Danbury Hatters' decision stirred labor to secure exemption from the operations of the Sherman Act. Many labor leaders believed that this had been achieved in 1914 with the passage of the Clayton Antitrust Act.⁹ Samuel Gompers declared that sections 6 and 20 of the Act¹⁰ constituted the Magna Charta of American labor, but a careful reading of them indicates that labor was likely to gain nothing from the passage of the Clayton Act. Section 6, for example, provided merely that no labor organization should be held to be an unlawful combination in restraint of trade. None of the decisions under the Sherman Act held unions as such to be unlawful, but held certain activities of the unions to be in violation of the laws. Section 20 apparently permitted strikes, picketing, and boycotts, but the emphasis throughout was upon the conditioning words "peaceful" and "lawful," and it is a function of the courts to decide when acts of unions are peaceful and lawful. There was little reason to believe that any of labor's activities which the courts had regarded as unlawful prior to the passage of the Clayton Act would be construed as lawful after its passage.

"Yellow-dog" contracts. In the latter part of the nineteenth century employers began to use the so-called "iron-clad" agreements by which a worker promised not to join a trade-union as long as he remained an employee of the concern. Later such agreements came to be called "yellow-dog" contracts by the unions. With the development of the antiunion campaign of the early 1900's they were employed with increasing frequency.

To the Erdman Act of 1898, which set up machinery to facilitate the settlement of railroad labor disputes, Congress added a rider providing that no railroad company might discharge an employee because of membership in a labor union. In the case of *Adair v. United States*, decided in 1908,¹¹ however, the majority of the Supreme Court declared that the employer had a right to hire or fire employees for any reason which seemed good to him. Restriction of this right was, in the opinion of the Court, a violation of the Fifth Amendment to the Constitution, which forbade taking away property without due process of law. The Court thus held that Congress and, by implication, the states were powerless to prevent the discharge of workers because they were unionists.

A Kansas law made it a criminal offense for an employer to require a worker to promise that he would not belong to a union while in the employ of the firm. In 1915, in ruling on the constitutionality of this law, the Court declared that the act violated the Fourteenth Amendment in depriving persons of their property without due process of law. A minority

⁹ 38 Stat. 718.

¹⁰ See Chapters 27-29.

¹¹ 208 U. S. 161 (1908).

of the court, however, vigorously asserted the right of the state to enact such legislation under the police power.¹²

Further approval by the courts of yellow-dog contracts came as a result of the case of *Hitchman v. Mitchell*, in which the Supreme Court rendered a decision in 1917. This case grew out of the use of antiunion contracts by the Hitchman Coal and Coke Company, in order to defeat attempts to organize its workers. The only way to make an antiunion contract effective was to prevent union organizers from persuading workers to join the union. The union, however, pointed out that it had not urged the employees to join until after they had severed their employment contract by going out on strike, and that there had therefore been no breach of the agreement. The lower court, which had granted an injunction restraining attempts at organization, took the position that in reality there was no difference between getting workers to join a union while still employed and getting them to join after they had gone on strike. The union was held to have induced breach of contract and, therefore, properly to be enjoined from carrying on attempts to organize workers who were employed under antiunion contracts. The Supreme Court, despite a vigorous minority opinion, upheld this view.¹³

Effects of Supreme Court decisions. By this decision the Supreme Court put itself in the position of approving the use of the injunctive process to prevent attempts, however peaceful, to organize workers who had been compelled by economic circumstances to agree not to belong to a union so long as their employment relation continued. By 1917 the Court had thus upheld the right of employers to discharge workers or to refuse to employ them because of union membership; it had declared invalid a state law making it unlawful for an employer to exact a promise not to join a union as a condition of obtaining a job; it had upheld the use of legal processes to aid the employer in fighting organizing attempts. More than ever before, labor believed that it could secure no justice from the courts, which it regarded as the instrument of the employers. The use of yellow-dog contracts became common in an ever-increasing number of American industries, and in such districts as West Virginia and Kentucky the courts became the principal aids of antiunion coal operators in their fight against organization.

¹² *Coppage v. Kansas*, 236 U. S. 1 (1915).

¹³ *Hitchman v. Mitchell*, 245 U. S. 229 (1917).

THE war years were of unusual significance for the American labor movement. Trade-union membership almost doubled in the five-year period 1915-20; significant labor legislation was enacted; organized labor was represented on important war agencies; the radical wing of the labor movement suffered major injuries; and there was a vigorous effort to organize mass-production fields little penetrated by unionization.¹

THE RAILROADMEN

One wing of organized labor—the railroadmen—was directly and profoundly affected by wartime developments. By earlier measures beginning in 1888, Congress had sought to promote the peaceful settlement of railroad labor disputes. Labor found the mediation measures acceptable but had become completely dissatisfied with arbitration as a method of settling disputes. This played a part in the decision of the four big brotherhoods to issue a strike order which affected all employees engaged in train operations in the country. The railway brotherhoods demanded that eight hours or a hundred-mile run or both be regarded as the standard day's work in the railroad service, and that payment for all hours over eight be at the rate of time and a half. The strike was to begin on Labor Day, September 4, 1916.

¹ See Chapter 14.

Railroad dispute of 1916. Joint conferences held in June were unsuccessful in settling the points at issue. The railroad managers, declining to accept the union demands, suggested that the whole matter be submitted to arbitration by the Interstate Commerce Commission or by a board constituted under the provisions of the Newlands Act. The workers, who had regarded certain previous decisions of arbitrators as unjust, rejected the proposal of arbitration. When the railroads were notified in August that the brotherhoods had voted overwhelmingly in favor of the strike if no satisfactory arrangements were made, they again proposed arbitration which once more the men refused. At about the same time the chairman of the United States Board of Mediation and Conciliation offered its services to the disputants. The mediators, however, obtained no concession from the men and only the renewal of the arbitration proposal from the management.

President Wilson's role. On August 13, President Wilson asked both sides to attend a joint conference with him to settle the controversy, for he declared that "a general strike on the railroads . . . would be disastrous." Following separate conferences with the managers and with the chiefs of the four brotherhoods, President Wilson asked the six hundred district chairmen of the brotherhoods who had the power to agree to arbitrate, and who were then in New York City, to come to Washington. Shortly after they arrived there on August 16, the President made proposals for a settlement of the controversy. He asked that the eight-hour day be conceded by the railroads but that consideration of the issue of payment for overtime be postponed until experience could disclose the consequences of the eight-hour day. In the meantime he proposed that Congress authorize the appointment of a commission by the President to observe and report upon those consequences, and that this report provide the basis for action.

These proposals were, in reality, a compromise of the demands of the unions. Under the existing standard ten-hour day, one hundred-mile run basis, the men were paid for a day's work after completing ten hours, or after completing a run of one hundred miles if this were accomplished in less than ten hours. By the President's plan a day's pay would be given the men after eight hours of work or after a run of one hundred miles in eight hours or less. Thus there would be an actual increase in wages without the time-and-a-half rate when the men worked at least eight hours but had not yet completed a hundred-mile run. If the demand for time and a half for overtime in excess of eight hours were granted, the increase in wages would be still greater.

On August 17, the managers turned down the President's proposals, and on the next day the unions, after a meeting of the six hundred brother-

hood officials, accepted them. To persuade the managers to accept his plan the President offered to use his influence to secure an increase in rates if the findings of the proposed commission showed that such an increase would be rendered necessary by the adoption of the eight-hour day. Despite his efforts, however, the railroad managers refused to accept his proposals.

The Adamson Act. Orders had gone out for a strike on September 4 if no settlement had been secured by that time, and these orders could not be rescinded unless the President's proposals were accepted by the railroads. When he learned of this in the last week of August, and when the railroad executives continued to reject his plan, President Wilson appeared before Congress on August 29 to request the passage of a law which would prevent the strike. Congress quickly complied with the President's request and the law, known as the Adamson Act, was signed by the President on September 3. The Adamson Act provided for the establishment of a legal eight-hour day for workers engaged in operating trains in interstate commerce and for the appointment of a presidential commission to study the results of the adoption of the eight-hour day.

When the bill was passed by the Senate on September 2, the brotherhood officials rescinded the strike order. Nevertheless, the legal enactment of the basic eight-hour day did not automatically secure the eight-hour day for railroad employees because Congress had neglected to require the roads to make a wage agreement which would put the law into operation. By the beginning of 1917 the ten-hour day was still in effect, and by March unrest had reached such a point that the brotherhood chairmen notified the railroad managers that a strike applying to men in the freight service would take effect on March 17 unless a satisfactory settlement was reached. The employers refused to meet the demands of the men, insisting that it was necessary to wait until the Supreme Court rendered a decision on the constitutionality of the Adamson Act. They proposed, in case the law were declared unconstitutional, to arbitrate the issue before the eight-hour commission provided for under the law. The brotherhoods rejected this proposal but delayed the strike for forty-eight hours at the President's request.

Meanwhile the international situation had become so serious that the two parties received word from the President that under no conditions should a strike be permitted to take place. The firmness of this message resulted in an immediate agreement between the disputants. On March 19 a contract putting into effect the basic eight-hour law was signed by the two parties, and on the same day the Supreme Court upheld the constitutionality of the Adamson Act.²

² *Wilson v. New*, 243 U. S. 332 (1917).

Labor and arbitration. The situation which led to the passage of the Adamson Act showed that labor's opposition to arbitration might be so great under certain conditions that it would prefer to wage a strike involving major sacrifices both for labor and for the public at large rather than trust its cause to an arbitration board. It is significant that this attitude has been exceptional on the part of labor. Labor normally favors arbitration when it believes itself to be the weaker party in the dispute. When it has confidence in its own power and believes that a strike would be successful, it is less likely to prefer arbitration. The determination of the great railroad brotherhoods to face a strike rather than to submit an important issue to arbitration indicates the extent to which these unions had attained a position of economic power in the railroad industry. It should be noted, moreover, that it took the threat of a strike and a major war to bring the railroad managers to accept the proposals made long before by President Wilson and even enacted into a law.

Government operation of railroads. On December 28, 1917, President Wilson took over the operation of all railroads and water transportation lines in the United States under the authority of an act passed by Congress in August of the previous year. The President named a director general of the railroads and in January, 1918, appointed a railroad wage commission to investigate wages for all classes of labor on the railroads. This commission later became the Board of Railroad Wages and Working Conditions. The management and the unions were represented equally in each of the three boards of adjustment set up under it. These boards had jurisdiction over the settlement of disputes arising out of the interpretation of agreements affecting different classes of employees in the train service. Operating during and after the war, these boards of adjustment, without interference from supposedly impartial outsiders, succeeded in settling controversies with a minimum of friction. Undoubtedly the wartime spirit of co-operation and the generally favorable attitude of the railroad administration to labor contributed considerably to the success of the system in preventing strikes. In any event, the experience of the boards themselves clearly indicated that settlement of disputes by conciliation between the two parties with no intercession by outsiders could produce desirable results.

INDUSTRIAL UNREST

Wartime strikes. The great unrest in the summer of 1917 brought about by war conditions resulted in many strikes. In the Far West, especially in the copper and lumbering industries, in which continued production was regarded as essential for war purposes, the labor disputes were particularly

serious. During the copper strikes in Arizona strikers were forcibly deported and union officials were treated roughly. In response to the request of the Arizona Federation of Labor that these developments be investigated, Samuel Gompers brought the matter to the attention of President Wilson, who turned the case over to Secretary of War Baker and to the chairman of the Council of National Defense.

President's Mediation Commission. The Council of National Defense, set up in 1916 with Samuel Gompers as a member, established a labor committee in order to secure labor's full participation in the conduct of war activities in the event that the United States entered the War. The Council suggested in August, 1917, that the President appoint a commission to investigate the labor troubles in the Far West. During September President Wilson designated a commission of five members, headed by the Secretary of Labor, William B. Wilson. Felix Frankfurter, now a member of the Supreme Court, was secretary of the commission. Known as the President's Mediation Commission, this body investigated labor conditions and settled a number of strikes, including one involving almost 100,000 men in the packing industry. In its special report on the deportations of strikers from Bisbee, Arizona, the Commission recommended that the authorities take steps to punish those responsible. Its report of January, 1918, was significant, for in it the Commission discussed the Mooney case, a *cause célèbre* for almost a quarter of a century.

THE MOONEY CASE

When Governor Olson of California pardoned Tom Mooney in 1939, the latter had served twenty-two and a half years in jail.³ Tom Mooney was a radical San Francisco labor leader, a molder by trade, who volunteered in 1915 to organize the street railway employees of San Francisco. During the summer of 1916 the campaign for war preparedness gathered momentum throughout the country. In San Francisco it was led by anti-union employers organized as the Pacific Coast Defense League. A preparedness parade, in which organized labor refused to participate, took place in July as part of the campaign. A bomb explosion during the course of the parade killed eight people, wounded forty, and caused an uproar in the city. Before the close of the month, Warren K. Billings, Mooney, Mooney's wife, and several local labor leaders were arrested as suspects.

Billings, who had been convicted in 1913 of carrying dynamite during a strike, was tried first, found guilty of murder in the second degree, and

³ Several months later Governor Olson released Warren K. Billings from jail.

sentenced to prison for life. Mooney, tried in January, 1917, was found guilty of first-degree murder and sentenced to be hanged. Every effort of the defense to prove that Mooney had nothing to do with the bomb—including the evidence of a photograph which showed that Mooney and his wife were at a considerable distance from the scene of the explosion five minutes before it occurred—was to no avail. The state produced a key witness, named Oxman, who identified Mooney as one of several men he saw carrying a suitcase—which allegedly held the bomb—and which they deposited at the spot where the explosion later occurred.

The conviction of Mooney was shortly followed by protests and demonstrations throughout the United States and in foreign countries. It was charged that he had been "framed" and was being sent to his death by antilabor interests. Those who came to Mooney's aid included Fremont C. Older, well-known San Francisco newspaper editor, who procured letters written by Oxman which revealed that his testimony was perjured. Appeals for a new trial, in which the presiding judge who had sentenced Mooney joined, were refused by the State Supreme Court on the ground that it was bound by the official record and could not admit new evidence. Mooney's fellow defendants, however, were acquitted in 1917. The President's Mediation Commission observed in its report of January, 1918, that the evidence raised doubts as "to the justice of the conviction of Mooney and Billings." Nevertheless, when the case was appealed before the California Supreme Court in March of that year, the verdict of the lower court was upheld. A subsequent appeal to the United States Supreme Court in November was also unsuccessful. Mooney's sentence, however, was commuted to life imprisonment by Governor Stephens upon President Wilson's request.

Year after year the battle to free Mooney and Billings went on. The numerous appeals to the California and the United States Supreme Courts and the successive governors of California brought no positive results, even though the judge who presided at the first trial, all of the jurors who had survived, and a number of witnesses who testified for the state declared their belief at one time or another that Mooney was unfairly tried or that the verdict was based upon perjured testimony. Outside of California, the conviction grew that Mooney had been "framed," and that only his record as a radical labor leader and the refusal of the California authorities to admit that they had been guilty of unjust persecution were keeping him in prison. Liberals and the organized labor movement consistently supported Mooney until he was finally released in 1939 by a governor whose election was due in large measure to the support of labor.

Labor and labor's martyrs. To American labor the Mooney affair was evidence that the worker was unlikely to receive just treatment from the

courts when he was involved in a dispute with aggressive, antiunion employer interests. In labor's eyes Mooney was a living martyr to its cause. The Sacco-Vanzetti case, which culminated in the execution of these two men in 1927, added two new names to the list of American labor martyrs, and, in the eyes of workers, gave greater weight to the belief that labor was unjustly treated by American courts. In the Sacco-Vanzetti case the evidence makes it quite clear that these two Massachusetts workers were sentenced to death, not because they were guilty of the murder with which they were charged, but because of their anarchist views.

THE NATIONAL WAR LABOR BOARD

Wartime labor problems. The entrance of the United States into the World War focused attention upon a host of problems in the field of labor. Some of these were new; some were old problems tremendously intensified by war conditions. The lack of organization in labor supply, its immobility, the necessity for adjustment to the demand for both skilled and unskilled workers in certain industries such as shipbuilding and munitions, the striking sectional and industrial variations in wages, the great increase in labor turnover, a decrease in labor efficiency, the tendency on the part of employers to ignore the legal safeguards for labor, the increase in labor unrest—these were only some of the many problems that had to be solved. When the United States entered the War, it lacked both an adequate, unified labor policy and a centralized, co-ordinated administrative machinery for dealing with labor problems. War conditions were responsible for the development of various agencies and mechanisms which brought about a virtual regimentation of the nation's labor force for war needs. One of the great difficulties that faced the federal government in the handling of its war labor problems was the great difference in the methods and policies of the various governmental agencies concerned with the production of war goods.

In September, 1917, it was proposed to the Council of National Defense that a federal board be created to adjust labor disputes and to formulate a set of war labor principles. There followed the appointment of the Secretary of Labor as Labor Administrator by the President, and the creation, at the end of March, 1918, of the National War Labor Board. Its members, appointed by the Secretary of Labor, consisted of five representatives of the employers, five of the employees, and two joint chairmen, former President Taft, who was chosen by the employers, and Frank P. Walsh, chosen by the employees. President Wilson quickly approved these appointments and issued a proclamation which announced the scope of the National War Labor Board.

Functions of the National War Labor Board. It was to settle, by mediation, controversies arising between employers and workers in fields of production necessary for the effective conduct of the war; it was to provide for the setting up of boards in various parts of the country which should attempt to secure the settlement of controversies as they arose; it was empowered to summon parties to controversies for hearings in case it was impossible to secure a settlement of disputes by conciliation and mediation. The President urged upon employers and workers that "during the pendency of mediation or arbitration through the said means or methods there shall be no discontinuance of industrial operation which would result in curtailment of the production of war necessities."

Labor principles of the Board. The Board also drew up a significant set of principles. No strikes or lockouts were to take place during the war. The right of workers to organize into trade-unions and to bargain collectively was affirmed and was not to be interfered with by employers in any manner. The right of employers to organize in order to bargain collectively was also affirmed. Workers were not to be discharged for membership in trade-unions or for legitimate trade-union activities. Coercive methods were not to be used to induce persons to join unions or to induce the employers to bargain collectively. The union shop and union standards were to be continued where they existed. The open shop was not to be considered a grievance. There was to be no relaxation of established safeguards for the protection of the health and safety of the workers. Where women were employed on work usually performed by men, they were to be paid equal pay for equal work. The basic eight-hour day was recognized. Prevailing standards in localities affected were to be considered in fixing wages and working conditions. The right of all workers to a living wage was asserted, and the minimum rates of pay to be established were to be such as to insure the subsistence of the worker and his family in health and reasonable comfort. These broad principles, approved by the President, were in one respect regarded as unsatisfactory to union workers, for unions were not to attempt to bring about a union shop where the open shop was in existence.

The work of the Board. The National War Labor Board, serving in almost every case as arbitrator rather than as mediator of disputes, functioned for about 16 months. Of the 1,251 cases which came before it, affecting over 700,000 workers, it made awards and findings in 490, and dismissed or referred the bulk of the remainder to other boards because of lack of jurisdiction. In December, 1918, with the War over, the Board decided to hear only those cases which were submitted to it by both parties after

mediation by the Department of Labor had failed. In August, 1919, it was formally dissolved.

The Western Union and Postal Telegraph Case. A number of the cases which came before the Board were of considerable importance. One involved the Western Union and Postal Telegraph companies. Over twenty thousand of their telegraph operators voted to strike in April, 1918, because some of their members had been discharged for belonging to the Commercial Telegraphers Union of America. The men postponed the strike on the request of the War Labor Board, and submitted their grievances to it. Chairman Taft proposed that Western Union take back the men whom it had discharged, receive committees of its own employees to consider grievances, and submit to the National War Labor Board controversies upon which agreements could not be reached. His suggestions did not call for recognition of the union, which was asked to agree not to strike. It was to take its grievances to the Board and abide by the latter's award. Any union member who failed to conform with the agreement could be discharged by the company.

The head of the Western Union Company rejected these proposals. He suggested that the employees be permitted to vote on whether they desired to join the union, but reiterated that in any case he would not deal with it. Chairman Taft, in declining this proposition, said, "I do not think our principles include the closed nonunion shop in the *status quo* to be maintained."

Reporting to the Board on June 1, the two chairmen recommended the publication of their findings. Thereupon all of the workers' representatives on that body voted for publication, while the employers' representatives opposed it. President Wilson addressed the heads of the companies on June 11, declaring that it was "imperatively necessary in the national interest that the decisions of the National War Labor Board should be accepted by both parties to labor disputes." As a result of this appeal the president of the Postal Telegraph Company agreed not to discharge union men during the war. Western Union, however, denied the right of the Board to enforce its recommendations and refused to accede to the President's request. In the face of its opposition to union affiliation, the Telegraphers' Union again voted to strike.

The issue was settled when Congress enacted a measure in July, giving the President power to take over possession and control of the telephone and telegraph systems. One reason for this measure, as stated by Postmaster General Burleson, was the threatened paralysis to our system of communication which endangered "our military preparation and other public activities. . . ." The telegraphers' strike was called off at the request of the Secretary

of Labor, and, on July 31, control of the telegraph and telephone lines passed over to the government. For a few weeks thereafter Western Union continued to discharge union members until the Postmaster General soon issued orders forbidding discrimination.

Bridgeport Machinists' Case. Another important case handled by the National War Labor Board involved machinists employed in munitions factories in Bridgeport, Connecticut. In August, 1917, these workers demanded wage increases and the adjustment of other grievances, including discrimination against union men and their alleged intimidation through threats of drafting them into the army. Local mediation proved unsuccessful, and in March and May, 1918, numerous strikes occurred. Finally, the Wage Adjustment Board of the Ordnance Department of the Army took up the demands and on June 7 handed down an award which was only grudgingly accepted by the employees. Some of the employers who had not bound themselves to abide by the award refused to put it into effect.

Toward the end of the month the War Labor Board concerned itself with the controversy. Early in July it succeeded in obtaining an agreement of all employers and of the union to abide by its decision. In August, however, it announced its failure to reach a unanimous decision on the award which, under its rules, was necessary in cases jointly submitted. An umpire appointed by the Board to determine the undecided points in the controversy rendered a decision early in September. Though some of the workers' contentions were upheld, the wage increases granted were very unsatisfactory to the men, who had waited nearly a year for a settlement of the question. Many of them, contrary to the advice of their leaders, went on strike against the award. At this point, President Wilson, acting on the recommendation of the Secretary of War and the Chairman of the War Labor Board, wrote to the strikers, charging that the strike was "a breach of faith" and threatening them with the draft unless they returned to work. He declared that they would be "barred from employment in any war industry in the community in which the strike occurs for a period of one year." The strikers immediately returned to work, but the manufacturers refused to re-employ them. Upon the President's insistence, however, all of the strikers were taken back, and the provisions of the award were put into effect.

Smith and Wesson Case. At about the same time, the President found it necessary to use his power against a recalcitrant employer. Early in the summer of 1918 the employees of Smith and Wesson Company of Springfield, Massachusetts, a concern engaged in manufacturing munitions under a contract with the War Department, named a committee to confer

with the management concerning wage increases. When the company, refusing to meet this committee, discharged its members, the employees invited the machinists' union to organize the plant. The company continued its antiunion policy. Finally, on July 12, nearly half of the employees struck. The War Department immediately intervened under a clause in the contract with the company which gave the Secretary of War the right to mediate labor difficulties. The Secretary referred the dispute to the National War Labor Board, which made an award granting the demands of the employees, directed the company to take back all men discharged for union affiliation, and ordered it to establish a system of collective bargaining.

Refusing to recognize the jurisdiction of the War Labor Board, the company declared that it preferred to turn the plant over to the government rather than put the award into effect. It saw "no reason why it should abandon its lawful and legitimate method of doing business known and proved by it to be conducive to industrial peace and high efficiency. . . ." After the War Department failed to induce the company to abandon its position, it took over the plant with the consent of President Wilson, declaring that the refusal to abide by the award was unreasonable and was "calculated to induce other employers to avoid the jurisdiction of the War Labor Board. . . ."

These three cases throw light upon the role of the government in labor disputes during the war years. The administration was determined to prevent both employers and employees from engaging in activities which would disturb production in essential war industries. In taking over the control of the telegraph and telephone systems, an action which would probably have occurred even without a labor dispute, the administration showed its determination to carry out its policies even in the face of the opposition of great corporations. The Smith and Wesson Case indicated that the government would not permit aggressive antiunion activities to be carried on in war-goods industries. In the case of the Bridgeport machinists, it displayed no hesitation about bringing pressure to bear upon employees who struck against an award by which they had agreed to abide.⁴

THE UNIONS AND THE WAR

Before the World War, antiwar and anti-imperialistic sentiments had long colored American trade-unionism. Under the pressure of war conditions, however, almost every trace of pacifism in the ranks of organized labor disappeared. Samuel Gompers, who had been an ardent pacifist, writes in his autobiography:

⁴ Edward Berman, *Labor Disputes and the President of the United States*. Columbia University Press. New York. 1924. Pp. 137-49.

Personally, I was seething with revolt against the atrocities and arrogance of the Kaiser's "ruthlessness." As the representative of American labor as well as an American citizen I felt intensely my responsibility in the War emergency. My desire to serve was a consuming passion and I was glad that opportunities for service were given me . . . as a spokesman for American labor, as an official of the War government, and as a member of the international labor movement.⁵

It should be noted, however, that the legislative committee of A.F.L.—with the support of Gompers—appeared before the military affairs committees of the House and Senate to argue vigorously against conscription.

When the entry of the United States into the conflict seemed only a matter of days, organized labor declared its unqualified support of the government if war should take place. This was done at a conference on March 12, 1917, attended by the Executive Council of the A.F.L. and by representatives from seventy-nine international unions affiliated with the Federation and from five independent unions. In order to offset the slight remaining socialist opposition to the War, and to mobilize labor in support of the War, labor leaders, social reformers, and prowar socialists organized the American Alliance for Labor and Democracy, in New York City in June, 1917.

War agencies and the unions. As early as 1916, Samuel Gompers had accepted a place on the Council of National Defense. The Council had appointed a labor committee, designed primarily to prevent strikes in the building of ships and cantonments. In June, 1917, an agreement between the Secretary of War and Gompers resulted in the establishment of the Cantonment Adjustment Commission, consisting of a representative of the Secretary of War, of the A.F.L., and of the public. This agreement which was the first ever made between organized labor and the federal government, granted union wages and other union conditions prevailing in the vicinity of the jobs being undertaken, but stipulated that open-shop conditions should prevail. In August, 1917, a Shipbuilding Labor Adjustment Board was created as a result of an agreement reached by the government with the American Federation of Labor and the unions having jurisdiction over workers in shipbuilding. Thereafter the Board secured the settlement of numerous disputes involving shipyard employees.

The extent of union representation upon governmental war agencies was striking. The unions were represented on the National War Labor Board, the Emergency Construction Board, the Fuel Administration Board, the Woman's Board, the Food Administration Board, and the War Industries Board. The last-named board had much influence in the control

⁵ Samuel Gompers, *Seventy Years of Life and Labor*. E. P. Dutton & Co. New York. 1925. II, 354.

of industries necessary for the proper conduct of the War, for its labor representatives handled all labor matters. Organized labor was also represented on each district exemption board set up in the administration of the conscription law. William B. Wilson, Secretary of Labor, in charge of the general administration of the government's labor problems, had served as an officer of the United Mine Workers for many years. Further recognition of the organized labor movement from the administration was expressed in President Wilson's address to the annual convention of the A.F.L. in November, 1917. This broadly favorable attitude towards labor on the part of the government, together with the labor shortage induced by the War and the rapid rise in prices, stimulated the tremendous growth in organization during the war years.

Organized labor assumed an important position in the administration of war activities. Although the unions were induced to do all in their power to prevent strikes during the War in return for recognition by the government, this did not erase the advantage which labor obtained during the period. Seeking its co-operation to prosecute the War to a successful conclusion the government of the United States for the first time recognized the importance of the organized trade-union movement.

LABOR AND THE PEACE TREATY

The I.L.O. Organized labor continued to play an important role after the Armistice was signed. Gompers was a member of the group which accompanied President Wilson to Paris early in 1919 in connection with the drafting of the peace treaty and the drawing up of a covenant for the League of Nations. At its second session the Peace Conference, created a commission to study international labor legislation of which Gompers was named president. The report submitted by the commission to the Peace Conference late in March recommended that the peace treaty provide for an International Labor Organization to be set up in connection with the League of Nations. This recommendation was adopted and the labor clauses were incorporated as part of the Treaty of Versailles. Every member of the League of Nations subscribed to the following principles: that labor was not to be regarded merely as an article of commerce; that employers and employees should have the right of association for all lawful purposes; that wages be adequate to maintain a reasonable standard of living; that an eight-hour day or a forty-eight-hour week be the standard working period; that there be at least one day's rest in seven; that child labor be rigorously restricted; and that men and women receive equal pay for equal work.

The Treaty of Versailles provided for the establishment of an International Labor Organization with headquarters at Geneva. In August, 1919,

President Wilson invited thirty-four countries to send representatives to the first session of the conference of the organization, to take place in Washington in October of that year. Since the United States had not yet signed the peace treaty or had become a member of the I.L.O., it had no official delegates at the meeting. The conference, however, invited American employers and workers to send delegates. Although the employers declined the invitation, Gompers was designated to represent the American workers, and Secretary of Labor Wilson was named president of the conference. Not until more than a decade later did the United States officially become a member of the International Labor Organization, which owed its founding to a considerable degree to the influence and persuasiveness of Samuel Gompers.

POSTWAR STRIKES

War conditions prepared the setting for some of the most critical strikes in the annals of American labor history. Among these the great steel strike of 1919 has particular importance.

The steel strike of 1919. After the defeat of the Amalgamated Association of Iron, Steel, and Tin Workers in the bitter Homestead strike of 1892 and the disastrous steel strike of 1901, organization in the steel industry dwindled away to almost nothing. As the industry grew in size and enlarged its corporate units and employed more and more foreign-born workers, labor conditions became progressively worse. Low wages and the twelve-hour day were the primary grievances of the workers. Until 1918 little effort had been made to organize steel or the other mass-production industries. In August of that year, following the adoption of a resolution by the annual convention of the A.F.L. declaring for a campaign to organize the steel workers, fifteen international unions affiliated with the federation formed the National Committee for Organizing the Iron and Steel Workers, with Samuel Gompers as chairman and William Z. Foster as secretary. Militant rank-and-file support and Foster's heroic labors more than made up for the somewhat lackadaisical attitude of many A.F.L. leaders, and the committee was able to organize more than 150,000 steel workers by the fall of 1919.

The companies affected answered this campaign with aggressive anti-union activities, discharging union men and prohibiting union meetings in the company-controlled towns. In May, 1919, the Amalgamated Association of Iron, Steel, and Tin Workers, the most important organization on the committee, asked the United States Steel Association for a conference. Judge Gary, then head of the corporation and the dominant figure in the industry, declared in reply that the corporation did "not confer, negotiate with, or combat labor unions as such." When the committee appointed a

conference committee to negotiate with the companies, discharges of union men immediately multiplied. In June, Gompers received no reply from his invitation to meet the conference committee. By the following month twenty-four international unions had joined the organizing campaign, and the committee voted to circulate a strike ballot. It drew up demands for collective bargaining, the reinstatement of all men discharged for union activities, pay for time lost, the eight-hour day, one day's rest in seven, the abolition of the twenty-four-hour shift, an "American living wage," double pay for overtime, the check-off, seniority, and the abolition of company unions. The membership voted overwhelmingly in favor of the strike unless the companies agreed to meet the unions.

Further attempts to secure a meeting with the United States Steel Corporation met with repeated failure as a result of Judge Gary's attitude. When the national committee finally wired President Wilson, then on his Western trip advocating the League of Nations, it called his attention to the discharge of union men by the companies and pointed out that the effect upon the workers was such that it would be difficult to keep them from striking. The committee asked the President to attempt to secure a conference for them with Mr. Gary. A general strike was voted to take effect on September 22 unless Judge Gary in the meantime receded from his stand.

President Wilson was unable to persuade Judge Gary to agree to a conference and, as the strike date approached, asked Samuel Gompers to seek a postponement until the meeting of the Industrial Conference, which he had appointed to draw up a national program respecting labor problems in the United States. The President's request was balanced by protests from the men against the postponement of the strike, and the national committee voted to reaffirm September 22 as the strike date. On September 17 Judge Gary again denied the right of the conference committee to speak for the employees of the United States Steel Corporation, and reiterated his belief in the open shop.

The strike began on September 22, and a week later an estimated 300,000 or more workers were out on strike. On September 25 the employees of the Bethlehem Steel Company, which refused to confer with the unions, joined the strike. Steel production in every region of the country was affected. Direct clashes between strikers and the deputies and private guards were frequent, especially when attempts were made to suppress meetings. In western Pennsylvania all meetings were suppressed, and the rights of free speech completely denied to the strikers. Early in October, a clash between strikers and negro strikebreakers in Gary, Indiana, led the governor of the state to dispatch the national guard to the steel districts of Indiana. When the strikers showed their contempt for the militia by conducting a parade contrary to the orders of the national guard, the governor appealed for federal

troops. A number of companies were sent to Gary, under the command of General Leonard Wood, who immediately declared martial law and limited the picketing activities of the strikers.

Throughout the strike the press devoted much space to the employers' position. Editorials and news dispatches, highly colored by an attitude favorable to the employers, featured stories of high wages already paid workers in the industry. This attitude of the press was largely responsible for the alienation of public sympathy with the strikers. The drain upon union treasuries, the rivalries among the numerous international unions, the continued suppression of strike activities by the public authorities, the attitude of the press, and the continued determination of the steel companies to concede nothing, all contributed to the defeat of the strikers. During November the strike ranks began to break up and enough men went back to work to permit a large number of the mills to resume operations. On January 8, 1920, in response to a request of the officers of the Amalgamated Association of Iron, Steel, and Tin Workers, the national committee declared the strike at an end. When the question of continuing the organizing campaign in the steel industry came before the convention of the A.F.L. in 1920, the matter was referred to the executive council, which on June 17 disbanded the national committee.

The failure of the steel strike of 1919 demonstrated the great power of the steel companies, for their victory was decisive enough to prevent any significant organization in the industry until the drive of the C.I.O. in recent years.⁶ They had felt themselves strong enough to turn a deaf ear to President Wilson's request to make the relatively slight concessions of meeting a committee representing the unions. The outcome of the strike enabled the steel corporations to maintain their antiunion policy for years, but it focused attention upon the grievances of the steel workers and dramatized the issue of the twelve-hour day. It also demonstrated the extent to which the great business corporations were able to control the press and the law-enforcement agencies as well as the lengths to which they would go to suppress union activities. It displayed, finally, the inability of the American trade-union movement, with its conflicting craft unions, to bring to a successful conclusion the campaign to organize a basic mass-production industry.

The coal strike of 1919. Of comparable significance was the coal strike of 1919, which clearly grew out of conditions brought about by the War. The Fuel Administration organized at the close of August, 1917, made an agreement the following month with the United Mine Workers. The agreement, which brought about a wage increase, was to last for the period of the

⁶ See Chapters 15 and 16.

War but not more than two years from April 1, 1918. A similar agreement, resulting in wage increases for the anthracite miners, was concluded in December, 1917. The rapid increase in the cost of living led the anthracite operators in October, 1918, to grant the miners an increase of one dollar per day. No such increase in the wages of bituminous miners was made, however, and, although the Fuel Administration advised the bituminous operators to follow the example of the anthracite operators, it refused to order an increase. The great unrest developing in bituminous mining regions came to a head when the Armistice brought hostilities to an end, for at that time the union asserted that the Washington agreement had also terminated. The disbanding of the Fuel Administration after the signing of the Armistice seemed to give support to the miners' claim.

The failure of the bituminous miners to secure an increase in wages led to numerous unauthorized and unsuccessful strikes. At the convention of the United Mine Workers, September, 1919, President John L. Lewis proposed as a remedy that the Washington agreement be terminated no later than November 1, that a joint agreement with the operators be affected, and that a nation-wide strike be called if a satisfactory agreement were not concluded. Demands for a six-hour day and a five-day week, a 60 per cent wage increase, time and a half for overtime, and double time for Sundays and holidays, were approved by the convention. It was proposed to end all existing contracts on November 1, 1919, and replace them by a two-year contract to run concurrently in all bituminous fields. The officials of the union were given the power to call a general strike. The operators answered these demands with the declaration that the Washington agreement continued in force until March 31, 1920. Thereupon a strike was called for November 1.

On October 31, 1919, the Federal District Court of Indiana, at the request of the Attorney General of the United States, issued a temporary restraining order against the officers of the United Mine Workers. They were ordered not to dispatch messages to carry out the strike order, to refrain from any act which would result in continuing the strike, to refrain from issuing further strike orders, and from paying benefits to miners. Since strike orders had already gone out and strike preparations had been made about 425,000 bituminous miners quit work on November 1, tying up 75 per cent of the bituminous coal industry in Illinois, Indiana, Ohio, Pennsylvania, and seventeen other states. Following this, the District Court issued a decree continuing in effect the prohibitions of the restraining order which had not weakened the strike up to that time. The decree therefore continued a mandate from the court directing the defendants to withdraw and cancel the strike order and to notify its district and local officers and the members of the union to this effect by the evening of November 11.

Officials of the United Mine Workers conformed with the directions of

the court, but mining was not resumed in the affected areas. The hardships resulting from the strike became more severe, and the Secretary of Labor shortly invited the miners and operators to a conference in Washington. At that conference the operators offered an increase of 20 per cent in wages for the Central Competitive Field on condition that the Fuel Administration, which had been temporarily reconstituted, permit an increase in the selling price of coal. The miners offered to reduce their original wage request to an increase of 40 per cent. When the operators turned this down, the Secretary of Labor submitted a compromise proposal providing for a general increase of 31.6 per cent. This was accepted by the miners and conditionally approved by the operators contingent upon the Fuel Administrator's granting an increase in prices sufficient to cover the higher wage. This compromise was referred to the Fuel Administrator, who, on November 26, refused to approve an increase sufficient to cover the 31.6 per cent wage increase. He offered the miners a 14 per cent wage increase, however, which they refused to accept, although the operators immediately indicated their willingness to do so.

At the request of the governors federal troops had been sent into a number of states to protect strikebreakers. The presence of the troops, the arrest of the union officials charged with contempt of court for violating the injunction, and the inability of the union to pay strike benefits under the terms of the injunction gradually weakened the strikers. On December 6, President Wilson again urged a settlement of the strike, asking the miners to resume work at wages 14 per cent above those in effect prior to the strike and promising that if they would do so he would appoint an impartial commission to adjust wages and prices. Accepted by the miners' leaders, the President's proposal was approved by the miners at a meeting at Indianapolis on December 10. The miners returned to work, and the contempt charges were dropped.

The United States Bituminous Coal Commission appointed by President Wilson awarded wage increases of 31 per cent to tonnage miners and of 20 per cent to day workers on March 10, 1920.⁷ This meant an average increase for all miners of 27 per cent of the rates in effect before the strike. The Commission, however, refused to grant the six-hour day. A conference of miners and operators met at the end of March and drew up a trade agreement based upon this award and affecting the Central Competitive Field. Shortly afterward similar conferences held in the outlying districts resulted in similar agreements.

The role of the federal government in the strike calls for special consideration. The Attorney General of the United States had petitioned the

⁷ There were three members on the Commission, the operators' representative dissenting from the award.

Federal District Court of Indiana for an injunction on the ground that the Lever Act of August 10, 1917, would be violated if a coal strike took place. That law provided for the federal control of food and fuel during wartime and made it unlawful to engage in activities which would restrict their supply or distribution and to prevent or hinder production of any necessities in order to increase their prices.

The Administration held that the Washington agreement did not come to an end with the signing of the Armistice on November 11, 1918, and that unless a treaty of peace were concluded by the United States before April 1, 1920, the agreement was to be effective until that date. The Attorney General elaborately argued that a war emergency still continued and that the strike was illegal. It is clear, however, that this assertion was a subterfuge for using the Lever Act as a means of preventing the strike. The miners had suffered a continuous decrease in real wages during the period of American participation in the war. When they attempted, nearly a year after hostilities had ended, to use their only effective weapon, the strike, to raise their wage standards, they were met by the combined forces of the employers, the federal government, and the courts. The strike demonstrated to the workers that the "honeymoon days" which labor enjoyed during the war period were over.⁸

The Seattle general strike. The coal miners were among several large groups of workers who suffered from a decline in real wages during the War years. It was a wage conflict characteristic of the time that also set the scene for the Seattle general strike. The rates of pay established by the Shipbuilding Adjustment Board for the duration of the War were unsatisfactory to the unions. Moreover, its award early in 1919, setting a uniform wage scale for the Atlantic and Pacific coasts, destroyed the differential hitherto enjoyed by the Western workers. When demands for a revision of the wage scale failed, the Seattle Metal Trades Council ordered a strike vote in which the workers declared for a strike. The Council then called a strike of the shipbuilding crafts for January 21, 1919, requesting \$8.00 a day for mechanics, \$5.50 for laborers, and the forty-four-hour week. Rumors that the chairman of the Emergency Fleet Corporation had prevented the employers from granting these demands infuriated the workers.

The strike began on January 21, and a day later the Council asked for the support of the Seattle Central Labor Council. This body submitted the question of a sympathetic strike to its local unions, sharply emphasizing the fact that the well-being of all Seattle workers rested upon the high wages paid to those in the shipyards. Each of the unions which voted for a sympa-

⁸ Selig Perlman and Philip Taft, *History of Labor in the United States, 1896-1932*. The Macmillan Company. New York. Chap. XXXVI; Berman, *op. cit.*, pp. 177-93.

thetic strike designated delegates to a general strike committee, which issued a call (February 4) asking all union men to walk out in a general strike two days later. By way of preparation, the strike committee had already requested union men who had seen military service to report for police duty, and had notified Seattle's chief of police that because labor itself would maintain order additional police would not be needed. It had also perfected plans to feed the population.

On February 6, every industry and trade in Seattle was halted by the walkout of 60,000 workers. The committee granted the necessary exemptions in order to provide for the feeding and policing of the city. Food was supplied at normal prices in food kitchens set up under the authority of the committee, and stations were maintained for the distribution of milk to families with children. Major-General Morrison of the federal army, who had been ordered to Seattle, and the Seattle chief of police declared that the city was quiet and orderly. Fewer arrests than were customary were made in Seattle during the strike, and none of them was due to strike conditions.

On the third day of the general strike the executives of the general committee recommended that it be ended. The committee rejected this recommendation, but on the following day some of the striking unions failed to answer the strike roll call. Several officials of the international unions, concerned over the breach of agreements by their locals as a result of the sympathetic strike, brought their influence to bear to terminate it. Rather than have the strike close by the secession of single unions, the general strike committee issued an order to end it, and on February 11, 1919, the strike was over.

To radicals the Seattle strike was an indication of the growing radicalism of American workers. Left-wingers in the labor movement regarded it as an indication that American workers were being educated to engage in revolutionary activities. To conservatives the strike was also evidence of the revolutionary character of the American labor movement. Although the view that the strike was in itself a revolutionary enterprise was repudiated by most of the relatively conservative craft unions which at first had supported the strike, this interpretation alarmed many union officials when they realized the implications of the general strike. Although the Seattle conflict was not the first strike of a general character conducted in America, it was more complete than any of its predecessors and thoroughly demonstrated the solidarity which existed in a time of unrest among all kinds of workers.

The Boston police strike. An unusual labor conflict of the postwar years brought about by the maladjustment of wages to mounting prices was that of the Boston police. This was not only the first and only significant instance of a strike of a police force in a large American city, but it also was indi-

rectly responsible for the elevation of Calvin Coolidge to the presidency of the United States.

Like many others with fixed incomes, the Boston policemen suffered severely from the rapidly rising cost of living during and after the War. For some years they had received no increase in pay. The police, of course, had no union, but years earlier they had organized the Boston Social Club, which had a membership of 1,400 by 1919. On August 1 of that year its officers informed the members that attempts to influence the police authorities to adjust their grievances had met with failure, and that they were in consequence contemplating affiliation with the A.F.L. The police commissioner and the newspapers vigorously opposed such an affiliation, and on August 11 the former issued an order commanding the police not to join the federation. In spite of this, a charter was issued to the policemen's association in mid-August. A committee appointed by the Mayor of Boston to settle the dispute suggested a plan under which the policemen could maintain their union but without affiliating with organized labor. This compromise also provided for an adjustment of wages and conditions of work by the committee and proposed that no policeman was to be discriminated against because he had been affiliated with the A.F.L.

The police commissioner, who had determined to deal decisively with the union, rejected this scheme and suspended the nineteen police officers who had been leaders in the movement. On the same day, by an almost unanimous vote at a mass meeting, the policemen decided to go on strike. When it began on September 9, 1919, crowds of hoodlums immediately gathered in the streets. A hastily recruited volunteer force was powerless to preserve order, and the mayor called out the Boston companies of the national guard. Order was very quickly restored.

To show its sympathy with the police strikers, the Boston Central Labor Union ordered its constituent unions to take a vote on a general strike. On the third day of the police strike, Governor Calvin Coolidge, however, took the initiative by appealing to the Secretary of War for aid in case of a general strike. On the next day the Governor's proclamation charged the police with desertion of duty and asserted that no striker would be taken back. At this point the policemen's union and the Central Labor Union requested the Governor to permit the strikers to return as individuals, the question of affiliation with organized labor to be held in abeyance. Mr. Coolidge referred them to the police commissioner, who declared the strikers' positions vacant and began to hire new men. As a matter of fact, no police officer who took part in the strike of 1919 was reemployed, and the new force that was built up consisted largely of young war veterans.

The Boston police strike had an indirect consequence of peculiar importance that could not have been apparent at the time. Governor Coolidge's

position on unionization of the police and his role in the strike led him to be considered by conservative groups throughout the country as the savior of Boston and as a leader in the fight against radicalism. The strike thus made possible his nomination for the vice-presidency in 1920 and played its part in affecting the character of national leadership during a portion of the fabulous decade of the 1920's.

AT THE close of the War, labor enjoyed, in many respects, an unprecedented position in the United States. Between 1915 and 1920 there was a 96 per cent increase in total union membership; in 1920 American unions claimed more than five million members. In the course of the following decade, a number of causes operated to bring about a sharp decline from this peak figure. There were also other significant developments for American labor during the 1920's. The postwar depression affected both individual workers and the labor movement as such. At the close of the War a spirit of radical liberalism found expression in several programs of "reconstruction," all promising a "new era," and in a vigorous labor and farmer-labor political movement.¹ This resurgent liberalism, however, was more than matched by a wave of conservatism and reaction which swept the country. Antiunionism, "Red-baiting," hysterical nationalism, the emergence of the Ku-Klux Klan, and the demise of political liberalism in the early twenties were manifestations of this swing to the right.

THE DECLINE IN UNION MEMBERSHIP

Up to the decade of the 1920's, trade-union growth normally accompanied industrial prosperity. The rise in the cost of living which generally came with economic well-being reduced real wages and thus helped spur the workers to improve their condition by organization. Between the close

¹ See below, Book III, Chapter 20.

of the postwar depression and 1929, America enjoyed its greatest period of prosperity, but union membership declined. A large number of unions, including practically all of the important ones, suffered material losses in membership. Between 1923 and 1929 the membership of unions in mining, quarrying, and oil production dropped from 530,000 to 271,000, and in the clothing industry from 295,000 to 218,000. In metals, machinery, and shipbuilding the decline was from 257,000 to 211,000; in transportation and communication it was from 907,000 to 892,000. During the same period the membership of all American trade-unions fell from 3,622,000 to 3,442,600. Only among the unions in the building construction industry, public service, entertainment, and in the paper, printing, and bookbinding industries were there increases in this period. It is estimated that 17.5 per cent of all workers were organized in 1920. In 1930 only 9.3 per cent were organized. In mining, quarrying, and the oil industries the percentage of organization declined during the decade from 39.6 to 22.4; in manufacturing and mechanical industries, including construction, the decline was from 22.2 to 12.2 per cent; in transportation and communication, it was from 39.6 to 22.1 per cent. The American Federation of Labor had a membership of 4,093,000 in 1920. In 1923 its membership was 2,918,900. Three years later the figure had fallen to 2,714,800, and in 1929 it was 2,769,700.

Causes of decline in union membership. The changes in union membership just described were due in part to the fact that lower prices during the boom years brought a significant rise in real wages for American industrial workers. This nullified what is normally an important stimulus to organization in good times. In spite of the general prosperity of the 1920's, however, key industries such as coal, clothing, shoes, and textiles were so seriously depressed that they had a marked effect upon organization in these fields. Shifts in the location of industries, widespread—and in some cases revolutionary—technological changes, the antiunion drive, and the shrewdly manipulated labor policies in the mass-production industries all played a part in preventing the growth of union membership. They added to the traditional difficulties in the way of organizing American workers. Finally, upon the shoulders of the trade-unions themselves and their leaders some responsibility must also be placed. As it has been observed,

The structure and policy of American trade unions, both friendly and hostile critics of the movement believed, were not adapted to meeting the problems of organization arising from the economic developments of the times. The craft union, the dominant form of organization . . . , was not in this view suited to the requirements of unionization in industries in which the customary skills and crafts had been modified by radical changes in technology and management.²

² Leo Wolman, *Ebb and Flow in Trade Unionism*. National Bureau of Economic Research. New York. 1936. P. 38.

THE "AMERICAN PLAN"³

At the close of the War the antiunion campaign which began in 1920 was disguised as a drive for the "American Plan." Its objective was the open shop, but it made its plea in terms of American principles and the inalienable right of every worker to enter any trade and to accept employment under conditions satisfactory to himself without the intercession of a union. Conservative farmers' organizations and the American Bankers' Association came to the aid of the employers promoting the "American Plan" for the abolition of the "un-American" closed shop. In New York State alone there were at least fifty active open-shop associations, and Massachusetts had eighteen such organizations in eight cities. The state manufacturers' associations were extremely active in the campaign, which include employers' associations in various industries and local chambers of commerce to put the open shop into effect. In Illinois, where there were forty-six open-shop associations, the Manufacturers' Association in October, 1920, offered aid to any employer fighting for the open shop.

In January, 1921, twenty-two state manufacturers' associations meeting in conference in Chicago officially adopted the name "American Plan." For a number of years thereafter the employers carried on an aggressive struggle against unionism, which resulted in the defeat of many strikes and destroyed many trade-unions. The campaign was aided by the turn in business conditions which occurred in 1920 and which, by 1921, had resulted in widespread unemployment in industrial centers. The growth of militant employers' associations, the principal purpose of which was to fight the closed shop, helped to make the campaign for the "American Plan" a success. The most strenuous opposition to the employers' efforts was encountered in the building trades. Here the well-organized unions succeeded in numerous instances in resisting the employers' attack. In many cities of the country, however, strikes to maintain union conditions were defeated, and building operations were resumed under open-shop conditions.

As the depression gradually gave way to increased business activity, the growing demand for labor in many industries reduced the importance of the open-shop campaign. This did not, however, mean the cessation of anti-union policies and activities during the following years.

WELFARE CAPITALISM

Drawing upon developments of the war years and the work of Frederick W. Taylor in scientific management,⁴ employers rounded out a technique

³ See below, Book IV, Chapter 26.

⁴ See Chapter 21.

of labor control during the 1920's which has been labeled "Welfare Capitalism." By this means employers sought to counter the union appeal with assurances of good working conditions, a fair wage, and guarantees against insecurity.

During the War, a number of corporations, to avoid dealing with trade-unions and to provide a regular means for hearing grievances, set up employee-representation plans which generally produced company unions. The company-union movement continued throughout the postwar decade, but its development during this period did not match the growth which took place after the coming of the New Deal. In line with the objectives of Welfare Capitalism, employers of the 1920's established savings schemes and mutual benefit associations designed to attach the workers to their jobs and to divert their interests from trade-unionism. Such associations frequently provided the employees with group life insurance, at the expense of the employer or with his aid, and sickness and accident insurance. Employers built playgrounds and clubhouses for their employees, furnished equipment for athletic events, and promoted the formation of athletic teams which would make the workers more enthusiastic about their connection with the establishment while they gave desirable publicity to the firm. Of special importance was the widespread sale of stock by corporations to their own employees.⁵

It was argued that the interests of the workers were being promoted by the employers because the well-being of the workers was economically profitable in terms of business efficiency. It followed that unions were unnecessary to protect the workers' interests. Progressive employers reiterated that high wages were desirable because they made the workers more efficient and more loyal and resulted in a reduction of wage costs per unit of output. Henry Ford was the principal exponent of this high-wage theory. Yet throughout most of the decade, and in spite of all the professed concern for labor, workers found themselves displaced by the introduction of new production techniques in many industries. Technological unemployment and the tendency to employ younger people became subjects of great public interest during this decade.

LABOR CAPITALISM

Comparable in interest with the development of Welfare Capitalism during the 1920's was the development of what has been called "Labor Capitalism." This had its beginning in the establishment of a bank by the International Association of Machinists in May, 1920. The Brotherhood of Locomotive Engineers, one of the richest American unions, followed in November of that year by setting up its National Co-operative Bank in

⁵ For a full discussion of all this, see Book IV, Chapters 22-24, inclusive.

Cleveland, which grew rapidly during the depression of 1921, its resources increasing by almost a million dollars a month in its first year. In October, 1921, the brotherhood took over a bank in Hammond, Indiana, in co-operation with local unions of the railroad engineers, firemen, and conductors, and reorganized it as the People's Co-operative State Bank. In the following year it opened a Transportation Brotherhood's National Bank in Minneapolis and a bank at Spokane, Washington.

Growth of labor banking. The Brotherhood officials expanded the scope of their financial operations in the spring of 1922 by establishing the Brotherhood Holding Company in the name of the union with a capitalization of more than \$1,000,000. This company was to make loans on uncompleted buildings and to aid the building of small homes and small-scale business enterprises. Early next year the organization entered the investment-banking field by organizing the Brotherhood Investment Company. It had a capital of \$10,000,000 and sold stock to the members and to the general public. In 1924-26 five additional investment companies were established under the control of the union.

Other organizations soon followed the Brotherhood into the financial field, and unions all over the country established small banks. The best managed of all labor's banking enterprises were the Amalgamated Trust and Savings Bank of Chicago and the Amalgamated Bank of New York, founded by the Amalgamated Clothing Workers of America in 1922 and 1923, respectively. The union also organized the Amalgamated Investors, Incorporated, to advise small investors, and helped to finance a group of co-operative apartment houses for its members. Between 1922 and 1924 the number of labor banks increased from seven to twenty-five, until by 1926, thirty-six banks, the peak number, were functioning.

Labor banking was justified on the ground that it could secure for labor a measure of control over industry not possible through traditional trade-union methods. It was also argued that labor banks could aid well-disposed employers, while they could, at the same time, keep the savings of the working class out of the hands of antiunion employers.⁶

In 1925 the parent bank of the Brotherhood of Locomotive Engineers in Cleveland decided to invest heavily in Florida real estate, even building a new town, Venice. Florida real estate was hardly a sound investment, however, and in 1926, there were rumors that the whole financial structure of the Brotherhood was in danger. A convention in the following year set up a committee to investigate the situation. Shortly before the convention began, the head of the Brotherhood, Warren S. Stone, who was primarily

⁶ See Perlman and Taft, *op. cit.*, pp. 577-79, for an exposition of the theoretical aspects of labor banking.

responsible for its ambitious financial program, died, and the investigation disclosed that the union's financial ventures had been recklessly and incompetently conducted. To cover its enormous financial responsibility as a result of the collapse of its enterprises, the union assessed each member five dollars a month for a period of two years and prohibited any further financial enterprises. In March, 1930, the parent institution, the Engineers' National Bank of Cleveland, finally merged with a nonlabor bank. Other labor banks collapsed from 1927 on, and the movement along the path of labor capitalism declined. In 1930, there were only thirteen banks, and two years later only seven.

LEFT-WING UNIONISM

During the decade of the 1920's there were several significant developments in the radical wing of the American trade-union movement. The assumption of power by the Bolsheviki in November, 1917, led to the division of the socialist movement in Europe and America into two camps. One faction held that the Bolshevik revolution was nonsocialist in character because Russia had failed to pass through a stage of highly developed capitalism and because it involved dictatorial government and the rejection of parliamentary democracy. The second agreed with the communist leaders that a dictatorship of the proletariat and the destruction of parliamentary democracy were essential in order that Russia might gradually be prepared for the introduction of a truly socialist society. The schism in the socialist movement over these questions appeared throughout the Western world and led to the formation of communist parties opposed to the less radical socialist organizations of the prewar years. In 1919 the Communist Party of Russia organized the Third International, which has since tied together and determined the philosophy and activities of the communist movement throughout the world.⁷

By the end of the War, the I.W.W. had suffered serious defeat, largely because of prosecution and persecution by the authorities, so that immediately after the War there was no important revolutionary union in the United States. In 1921, William Z. Foster, who had directed the steel strike and was now a leader of the communists in the United States, sought to create such a body in the Trade Union Educational League. His experience in the steel strike and his determined belief in industrial unionism convinced Foster that successful co-operation among the various craft unions to organize the mass-production industries was unlikely.

The amalgamation movement. Among progressive trade-unionists the amalgamation of craft unions became an important issue, for they believed

⁷ For the Third International, see Book VI.

that this was an indispensable defense against the open-shop campaign. In March, 1922, the Chicago Federation of Labor adopted a resolution favoring industrial unionism and asked the A.F.L. to bring the international unions together in order to promote organization by industry. A number of state and local federations and several international unions also declared for amalgamation, and Samuel Gompers and the Executive Council of the Federation soon became alarmed over the movement towards amalgamation and industrial unionism. They had no objection to voluntary amalgamation by related craft unions, but they feared that Foster's efforts would lead to a type of amalgamation which would in turn result in the promotion of rebellion against the leaders of the international unions. Most of those unions, following Gompers, began to oppose the amalgamation movement. The Federation, in its determination to defeat Foster, revoked the charter of a local union in New York which was led by adherents of the Trade Union Educational League.

The communists in the garment unions. The communist faction was extremely active in the International Ladies' Garment Workers' Union from 1922 on, the officers of the largest New York local demanding that the international affiliate with the Red Trade Union International, a communist federation of unions throughout the world. With the election of a new president in January, 1923, the official position of the I.L.G.W.U. changed, and in the following August the General Executive Board of the union ruled that union members who belonged to outside organizations which interfered with the affairs of the union were subject to expulsion. In Chicago, members who belonged to the Trade Union Educational League were almost immediately expelled. In New York some members were disqualified from holding office for five years because of their activities in the T.U.E.L., and at the convention of the international union in May, 1924, several delegates were unseated because of their connection with the League.

In 1925 the communists gained control of the three largest New York locals, and, when they invited outside communists to speak at a May 1 meeting, the General Executive Board of the international suspended the officers of these locals. These individuals then organized a Joint Action Committee to fight the international, employing \$90,000 of the locals' funds for this purpose, an act later approved by the locals. With many shop chairmen supporting the committee, it called a stoppage of work on August 30. Many employees were discharged for participating, and strikes followed to reinstate them. As a means of bringing the dispute with the communists to an end the international president, Sigman, proposed that new trials be granted to the suspended officers and that a general manager of the joint board be elected. In the elections held by the three locals in accordance with

the suggestion the communists again won an overwhelming victory. In July, 1925, a special convention, called to restore internal peace, was controlled by the administration and re-elected the international officers. The struggle between the communists and the international officials in the union was thus by no means over.

In the meantime, serious differences between the union and the manufacturers in New York led to the appointment of a committee by Governor Alfred E. Smith to investigate the industry. The report of the Governor's committee, however, was the source of a conflict between President Sigman and the communist-controlled joint board. While the former viewed the recommendations of the committee as advantageous, the joint board preferred to strike rather than accept them as a basis for negotiation.

On July 1, 1926, 40,000 New York cloakmakers began a twenty-week strike for the limitation of contractors, increases in minimum wage scales, a guarantee of thirty-six weeks of employment a year, the forty-hour week, equal distribution of work, and against the right of employers to reorganize the shops (a practice which frequently resulted in the discharge of men and the recruiting of new employees). The joint board finally settled upon terms which the international officers charged were not as good as those framed by the Governor's commission. They pointed out that the employers could reorganize their shops several times each year, and that there was no provision for the limitation of contractors. It was over this matter that the communist wing renewed its attack upon the international officers.

The submanufacturers' association then demanded the same terms as those concluded with the "inside" manufacturers. When the union showed no disposition to reply within a given period, the submanufacturers' association declared a lockout. In December, 1926, the international union finally stepped in, taking over the management of the New York unions and agreeing to arbitrate. The communists responded by calling a mass meeting to which their opponents were denied entrance. The international countered by setting up a Provisional Joint Board, establishing seven new locals, and requiring members of the old unions to register anew. After the Governor's commission handed down an award favorable to the international union, the latter granted a conditional amnesty in September, 1927, to all expelled communist members. In 1928, the communists in the I.L.G.W.U. and the furriers' union organized the Needle Trades Workers' Industrial Union.

Other American unions, such as the furriers' union, witnessed internecine struggles between the communists and the international officers which were often as vituperative in character, though rarely as serious in their consequences, as the conflicts just described. In the Amalgamated Clothing Workers of America, for example, the communists were defeated only after years of bitter strife.

Trade Union Unity League. The policy of "boring from within" the established unions pursued by the Trade Union Educational League was so bitterly fought and brought such slight gains that the Executive Committee of the Communist International criticized the League for its failures as early as 1926. By 1928 the Red International Labor Union had come to the conclusion that a policy of dual unionism was necessary, and it ordered the League to transform itself into a center for independent trade-unions. In September, 1929, the League became the Trade Union Unity League. The new organization pursued the policy of organizing independent industrial unions in a number of the industries which were under the jurisdiction of unions affiliated with the American Federation of Labor, and in that role formed the National Miners' Union and the National Textile Workers' Union and furthered the interests of the Needle Trades Workers' Industrial Union.

In the years following 1929 the policy of the Trade Union Unity League combined the formation and support of dual industrial unions with the tactics of "boring from within." Following the lead of the Communist International, communist organizations everywhere in 1933 adopted a "United Front" policy which sought to combine all radical and progressive forces against fascism. The American communists in the trade-unions again changed their attitude and activities. Dual unionism now fell completely into disrepute, and, in order to instill greater militancy in the trade-unions and push industrial unionism, the communists even supported A.F.L. officers whom they had previously bitterly opposed. The developments of the period after 1933 are treated fully elsewhere in this volume.⁸

Communist strike leadership. During the 1920's the communists provided the leadership for a number of important strikes, playing a role comparable to that of the "Wobblies" before the War. The depressed textile industry invited the attention of the communists, and through the National Textile Workers' Union they conducted the tragic Gastonia strike of 1929, one of several bitter struggles which occurred in textiles at the close of the 1920's. It should be noted in this connection that a number of important textile strikes in the South—those in Marion, North Carolina; Elizabethton, Tennessee; and Danville, Virginia, for example—were carried on by the United Textile Workers, an A.F.L. affiliate.

The Gastonia strike. A secret organizing campaign by the National Textile Workers' Union in Gastonia, North Carolina, preceded the strike call of April 1, which was answered by seventeen hundred of twenty-two hundred employees. The demands of the union reveal the conditions which

⁸ See Book III.

caused the strike. They included a forty-hour and a five-day week, a minimum wage of \$20, and the abolition of the stretch-out system. One of Gastonia's principal mills was owned by the Manville-Jenckes Company, a Rhode Island corporation which, soon after the strike began, announced that all strikers would be evicted from the company houses. Although national guardsmen were on the scene early in the strike, during its third week several hundred masked men raided the strike headquarters and destroyed the building. The workers evicted from the company houses established themselves in a tent colony organized by the union; when police attempted to enter the colony on the night of June 7, the strikers guarding it demanded a search warrant. In the course of the shooting which ensued, the chief of police was killed and a striker and two policemen were injured. Some hundred strikers were jailed, charged with second-degree murder, although the evidence indicated that responsibility lay elsewhere. Seven were finally found guilty after a three-week trial and were sentenced to terms varying from five to twenty years.⁹ During the trial, a mob again demolished the strike headquarters, and an organizer was severely assaulted. Another mob killed a striker who was the mother of five children. After the grand jury refused to return an indictment for this crime, the governor intervened. All fourteen persons held for trial were later acquitted.

A strike which witnessed several deaths, the activities of vigilantes, the intervention of the public authorities on the side of the employers, and the awakening of wide public interest and bitter feelings, brought the Gastonia workers only a decrease in hours from sixty to fifty-five per week, with no reduction in pay.

THE MINERS

For the miners, the decade of the 1920's was indeed critical because of the character and condition of the coal industry. The efforts of the United Mine Workers to organize the nonunion bituminous coal areas in Kentucky, Tennessee, Alabama and especially in West Virginia were hampered by serious obstacles. Nonunion operators resorted to antiunion contracts, the use of which had been upheld by the Supreme Court.¹⁰ Complete control of coal villages by the operators made it impossible for union organizers to reach the miners either privately or publicly. In many cases the antagonism between operators and miners was so sharp that it resulted in a sort of local civil war, with both sides resorting to force. The operators, generally controlling the public authorities and able to employ mine guards and to pay deputies, succeeded, as a rule, in suppressing the organizing attempts.

⁹ The communist leaders who had been found guilty of second-degree murder posted bond and appealed to the state Supreme Court. That court upheld the sentences, and the defendants, forfeiting their bonds, failed to appear.

¹⁰ *Hitchman Coal & Coke Co. v. Mitchell*, 245 U. S. 229 (1917).

The 1922 dispute. In 1922 the agreements in the anthracite and the bituminous industries expired. To avoid a strike President Harding had sought before the expiration date to arrange a conference between the two parties so that an agreement might be reached. Refusing to make an agreement to continue at work in case no contract had been concluded by the end of March, 1922, the miners invited the operators in the Central Competitive Field to a joint conference to be held in January. While the operators of Indiana and Illinois accepted, those of western Pennsylvania and some of the Ohio operators rejected the invitation, and the proposed meeting was called off.

In January, 1922, the anthracite miners adopted demands for a 20 per cent increase in pay and the introduction of the check-off system. Shortly after, the bituminous operators in parts of Ohio and Pennsylvania posted notices of wage reductions of from 35 to 40 per cent and announced the abolition of the check-off, to take effect at the expiration of existing contracts. At the same time Indiana operators adopted a resolution favoring drastic reductions in wages. A convention of the miners in the middle of February decided to oppose wage reductions and to suspend work, beginning April 1, unless a satisfactory agreement with the operators in the Central Competitive Field was reached before that time. Not all the bituminous operators agreed to attend the joint conference that President Lewis then proposed. The others offered to meet the miners in district conferences and to draw up district agreements, many of them arguing that they could not make agreements which placed them at a disadvantage in competition with the operators of better mines. Another attempt by President Harding to bring about a joint conference of operators and miners also fell through.

Meetings in joint conference between the anthracite operators and the miners for the purpose of negotiating a new wage scale began on March 15 and continued for several months. The basis for an agreement was found in a proposal made by Senator Reed and Senator Pepper, and urged by the President: to continue wages paid under the previous contract until the end of August, 1923, while a fact-finding commission appointed by the President investigated the industry. The plan was agreed to by the operators on September 2 and was ratified by a convention of the anthracite miners.

The "Herrin massacre." Despite efforts on the part of the Secretary of Labor to effect a settlement, the dispute in the bituminous field continued. On June 21 the nation was aroused by the report of the killing of a number of men in Herrin, Illinois, when an operator attempted to run a mine with imported strikebreakers in a strong union district. The "Herrin Massacre" was immediately used by antiunion interests as an argument against the unions and drew increased attention to the bituminous strike. Once more

the administration stepped in when President Harding invited the representatives of the miners and operators to meet him at the White House on July 1. Although joint conferences continued after this meeting, they produced no understanding. On July 10 President Harding proposed a plan similar to that accepted by the anthracite miners: the bituminous miners return to work at the wages paid under the previous agreement (the scale to be effective until August 10, 1922) while he appointed a coal commission to investigate the coal industry and to determine a temporary wage scale to be effective until March 1, 1923.

The miners were willing to have the industry investigated but withheld their acceptance of arbitration; a majority of the bituminous operators agreed to the entire proposal. President Harding then invited the operators to resume operations, sent telegrams to the governors of twenty coal-producing states, asking them to protect the efforts of the operators to work their mines, and instructed the War Department to keep its forces ready for strike duty. It soon became apparent, however, that little coal was being produced, in spite of the President's activities. Finally, on August 1, President Lewis sent the bituminous coal operators of the Central Competitive Field another invitation to confer. The Illinois operators, together with other operators insisting on the arbitration of the issues, refused to attend the conference, which started as scheduled, but with only a small proportion of the bituminous tonnage, most of it from Ohio, represented. An agreement finally signed on August 15 adopted a basic contract and provided for the drawing up of supplementary contracts in other bituminous areas. With the gradual resumption of mining in many districts, those operators who had at first refused to participate in the conference signed the agreements which were reached as a result of it. By August 30 the opposition to the union had crumbled.

This conference decided upon the selection of a committee to investigate the coal industry, whose personnel was to be approved by the President. On August 18 the latter asked Congress to enact a law providing for a committee of investigation and, after the law was approved on September 22, named the committee in October. Its report, published after extensive investigations, received wide attention and gave much publicity to the ills from which the industry was suffering.

The Jacksonville agreement. The agreement concluded after the strike of 1922 was due to expire on April 1, 1924. As that date approached, the operators showed an increased determination to avoid making a joint agreement. Nevertheless, on February 19, 1924, the so-called "Jacksonville agreement," to last until 1927, was drawn up between the operators and miners of the Central Competitive Field. Soon after the conclusion of this agreement

union operators in West Virginia arbitrarily returned to the 1919 scale, and the important Pittsburgh Coal Company, repudiating the agreement, became a nonunion concern. As other groups of operators withdrew from the agreement and put wage reductions into effect, the competitive pressure upon those still paying the Jacksonville rates became greater. A number of employers' associations which were willing to continue to deal with the union requested that the wage question be reopened, but the union, refusing to make any concessions, stood fast by President Lewis's slogan, "No backward step."

When the Jacksonville agreement was signed in 1924, the output of the organized fields was 60 per cent of the total. During the following year, however, they produced only 40 per cent of the coal tonnage, and the position of the union operators became increasingly unfavorable. Repudiation of the agreement spread, and before long the union had lost a great deal of the territory which it had so slowly and laboriously won.

Dissension in the U.M.W. The "No backward step" policy and the continued decrease in the power of the union produced dissatisfaction with President Lewis and his administration within the United Mine Workers. In 1926 a "Save the Union Committee" was formed, and opposition candidates were nominated. John Brophy, then president of the Pennsylvania District of the United Mine Workers, Frank Keeny, the head of the West Virginia District, and Alexander Howat, insurgent leader of the Kansas miners, were leaders of the opposition forces. In 1927, however, the "No backward step" policy was reaffirmed by the national convention. With the union's insistence upon maintaining the Jacksonville agreement, prospects of another interstate agreement became slight, and the union authorized individual settlements to be made on condition that no reduction in wages be put into effect. In Illinois, which remained the only important area in which the organization was still powerful, the operators refused to negotiate a contract continuing the Jacksonville scale. After a strike of six months, however, it was agreed to continue the old scale until March 31, 1928. While operators in a number of other states made similar agreements, those in western Pennsylvania and Ohio refused to accept the union demands. In their bitter struggle against the unions, the operators evicted union members from company houses and restricted their civil liberties.

When the temporary settlements made in Illinois and elsewhere were about to expire, the operators demanded wage reductions varying from 20 to 33 $\frac{1}{3}$ per cent. This brought another suspension of work in Illinois in April, 1928, but individual agreements were soon concluded with more than fifty operators. When it became apparent that the continuance of the Jacksonville scale was the sole stumbling block to a relatively permanent settle-

ment, it was decided to permit each district to make the best settlement it could, even if it had to accept wage rates lower than those set by the 1924 agreement. With this concession wages were reduced in Illinois to \$6.10 per day, where a contract was drawn up to continue in force until March 31, 1932. Other states followed suit, but the operators in Ohio and western Pennsylvania remained adamant. Finally, in July, 1928, the international officers called off the strike which had been going on in these two states.

The revolt against John L. Lewis. By this time opposition to President Lewis had assumed critical proportions, affecting the anthracite as well as the bituminous areas. The "Save the Union Committee" called a national conference for April 1, 1928, and drew up proposals for the continuation of the strike in Pennsylvania and Ohio, a six-hour day and five-day week, the nationalization of the mines, a labor party, the Jacksonville scale, a national agreement, and democracy in the union. This conference provided the administration of the union with grounds for attacking the "Save the Union Committee" as a dual organization. Its leaders were expelled from the United Mine Workers as dual unionists, and expulsions followed throughout the coal fields. The policy of the administration encouraged the communists to enter the scene and to launch the National Miners Union at the close of September.

In 1928 the controversy between the Lewis and anti-Lewis forces reached a climax in Illinois. After Lewis removed the officers of one of the subdistricts of the Illinois union, replacing them with his followers, the Illinois union redistricted the area so as to eliminate the Lewis-controlled subdistricts, at the same time charging the Lewis men with incompetency, corruption, and violation of the union laws. President Lewis revoked the charter of the Illinois district in October, 1929, but when he moved to take over the property of the district, the officials of the latter successfully applied for an injunction against him. The international officers then called an international convention, but the anti-Lewis groups, led by the Illinois district, declared that the constitution of the United Mine Workers had lapsed because of alleged unconstitutional methods of the administration. They issued a call for a convention to reorganize the United Mine Workers of America. The anthracite districts refused to join the insurgents, but most of the bituminous miners remaining in the union were from Illinois and Kansas, where the anti-Lewis forces were in control. The new "Reorganized United Mine Workers" of the opposition elected as president Alexander Howat, who was then president of the Kansas district, who had been expelled and then reinstated by the Lewis machine.

A decision by a state court, probably the result of a compromise agreement between the two factions, provided the means for settling the struggle

within the United Mine Workers. It declared that the old constitution of the U.M.W. had not lapsed, that Lewis was still its president, and that the old officers of the Illinois union were still in office and in good standing with the international union. Lewis was directed not to interfere with them, and individual members of the reorganized union in Illinois had their old rights as members of the Illinois district restored to them. The insurgents continued to oppose Lewis, particularly outside of Illinois, but even in that state dissident groups refused to accept the compromise and formed the Progressive Miners of America. In West Virginia the miners organized an independent union; and still in the picture was the National Miners' Union, controlled by communists. The struggle between the Progressive Miners union and the United Mine Workers was most intense and has since continued.¹¹

The problem of the nonunion miners. For many years the United Mine Workers had tried to organize the unorganized miners, and in West Virginia, Tennessee, Kentucky and elsewhere its attempts were largely unsuccessful. These organizing drives were essential because of the peculiar character of the coal market. The operators of Illinois had to sell coal in competition with the West Virginia and Kentucky operators. Those of Pennsylvania and Ohio competed not only with the union operators of Iowa and Illinois but also with the nonunion operators of Tennessee and West Virginia. Wages in the nonunion fields were generally much below those in the union fields; consequently, the labor costs of union operators were much higher than those of the nonunion operators. The former naturally complained constantly to the U.M.W. that it was impossible to carry on joint agreements unless the nonunion districts were also brought under them. The nonunion operators enjoyed another advantage in the fact that in their relatively new mines the coal was more readily accessible than was the case in the old mining districts of the Central Competitive Field. West Virginia operators, for example, frequently were able to dig into the side of a mountain and reach the coal with relatively little expenditure. Mines in the nonunion districts had come into operation at a relatively late date; it was therefore possible to obtain coal fairly close to the mine mouth. Furthermore, the operators in the newer nonunion fields were able to use more efficient types of equipment developed in later years. Finally, the nonunion operators as a rule mined coal which was not only richer in its capacity to generate heat but occurred in relatively thick veins which were more profitable to exploit than the thin-veined deposits of the Middle West.

¹¹ See Chapter 15.

Instability and depression in the coal industry. Situations comparable to this have developed in many industries where older and less efficient operating units are weakened by the competition of more efficient firms enjoying low operating costs. The peculiar character of the coal industry, however, has aggravated the virtual economic chaos which has ruled there for many decades. In many of the thirty or so states in which coal is found it can be procured by merely taking off the top layer of soil and digging the coal which lies underneath. When prices are high, even inefficient mines, which normally compete with difficulty, produce coal for the market. At these times the owners of coal lands are induced to lease the coal rights to operators, with the result that far too many mines are in operation, employing many more miners than are necessary to meet the public need. Active demand for coal and high prices lead to further expansion of mine operations.

In a declining market even efficient mines cannot operate all year, and the less efficient units are often compelled to shut down completely. Capital sunk in mining equipment cannot normally be used for other purposes; hence when a coal company is unable to meet its obligations for a prolonged period it must undergo financial reorganization. The capital is written down and the overhead costs which must be met are accordingly reduced. This occurs a number of times if business is depressed, until, finally, the overhead costs are reduced to a point where no sound basis of business operation exists. With intensified competition in the industry, the condition of the operators becomes worse and worse. Unemployment is characteristic of all mining operations, the more efficient mines being able to operate a larger portion of the year than the less efficient ones. But since even the most efficient are rarely able to continue operations throughout the year, serious seasonal unemployment is the result.

During the 1920's the coal industry suffered further dislocation because of technological changes. Enormous improvements were made in the efficiency of fuel burners, electricity was being used to an even greater extent in manufacturing, oil and natural gas began to replace coal as a domestic fuel, and the discovery of natural gas wells brought about a relative decline in the consumption of coal to generate artificial gas. In mining itself new devices enabled the efficient operator to produce much more coal than was previously possible. The total result was greatly increased competition from other fuels and a lessened demand for coal, together with a capacity on the part of the efficient mines to produce much greater quantities of coal with fewer miners.

A union in an unhealthy industry. Both coal miners and the United Mine Workers were critically affected by the chaotic condition of the indus-

try. To protect their interests they had to insist upon the maintenance of relatively high daily wages, especially because seasonal unemployment was such an important factor in the industry. To keep the union operators under control they had to attempt to bring nonunion mines under the agreements. The nonunion operators, on the other hand, fully aware of the advantages to them in opposing unionism, employed all means in the fight.

This situation accounted not only for the gradual weakening of the United Mine Workers and for the rise of insurgency in the union, but also for the almost complete breakdown of collective bargaining which had resulted by 1929.

THE CLOTHING WORKERS

The clothing industry. Within recent years the clothing industry has ranked high among America's unhealthy industries, and its vicissitudes have, of course, affected the unions in the field. After 1910, the strength of the unions, especially in men's clothing, led to an increase in large-scale manufacturing and to the bankruptcy of small, sweatshop concerns unable to compete with the larger, more efficient units. While thousands of small shops still existed, especially in the ladies' garment industry, the general tendency was in the direction of eliminating the sweatshop and shifting production to larger establishments which were more easily controlled by the union.

During the 1920's, however, the small shop again became important throughout the industry. Many small manufacturers, in order to escape from union control and the consequent higher wages, attempted to move their shops to small towns and villages scattered throughout the country. In the Chicago area small manufacturers set up establishments in Kenosha, Wisconsin, and Springfield and Decatur, Illinois; in the New York area manufacturers set up shops in Red Bank, New Jersey, and in other small towns in that state, Connecticut, and Pennsylvania. The movement of small factories into less industrialized centers was frequently encouraged by the local communities in order to bring employment to local labor and increased business to local merchants. Numerous inducements attracted runaway manufacturers from the older industrial cities: they were granted exemption from taxes for a period of years, and communities raised funds to pay the expenses of moving machinery and equipment or furnished the incoming manufacturer with a building. The small towns and villages held out a further inducement in an ample supply of cheap labor uninfluenced by the virus of unionism. This development has also occurred in the shoe and the textile industries, and accounts in part for the great decline in the importance of such shoe-manufacturing cities as Lynn, Haverhill, and Brockton, and the textile cities of Nashua, Lowell, Lawrence, and Pawtucket.

Union problems. Because of shifts in the location of shops, the clothing unions were forced to attempt to organize in hitherto untouched areas in the country. Unless the unions could control these small shops, the city manufacturers dealing with the unions would be under constant pressure to secure a reduction in wages or the abolition of collective bargaining. The whole problem was made more difficult during the middle 1920's by other related factors. The price of clothing and the capacity to produce it were not geared to each other. Constantly improved methods of production enabled competitors to reduce prices more and more. These technological improvements resulted in increased unemployment and were an added inducement to employers to rid themselves of the burden of dealing with the union and of paying the relatively high union wages.

For years the Amalgamated Clothing Workers had served the large clothing manufacturers, especially in Chicago, by virtue of the expert technical knowledge which its officers possessed of the problems of the industry. In Chicago and in a number of other cities the wages paid under the collective agreement were based upon piece rates, and the workers' income depended upon the efficiency of plant operations. If a machine got out of order, if a "bottle neck" occurred in the productive routine because too few workers were assigned to a particular task and the stream of work which came to the workers further along in the process was thus slowed down, the ability of the workers to earn an income was seriously affected. To them the continuous and regular opportunity to earn piece rates was all-important; when something obstructed this opportunity, they complained to the union officials. The latter investigated the complaint and, wherever feasible, suggested means of increasing productive efficiency.

Union-employer co-operation. In 1924 Hart, Schaffner and Marx, where collective bargaining had functioned successfully for many years, found itself so affected by competing employers who had succeeded in getting rid of collective bargaining restrictions that it appealed to the Amalgamated to help it reduce costs of operation in its factories. The union responded by taking over numerous functions of the management and planning a reorganization of production to promote a great reduction in costs. In 1925 the firm turned over to the union a special shop in which the new program was given a trial. The union took charge of shop discipline. Shop customs, which had often led to serious disputes with the management and which the latter regarded as a cause of high operating costs, were surrendered by the workers. Operations were greatly simplified and piece rates actually lowered, without, however, causing a decrease in total earnings. In some cases earnings were actually increased because of greater efficiency. By 1926 the union's reorganization of plant operations had been put in effect in most of

the shops of Hart, Shaffner and Marx. Other large establishments in Chicago were similarly reorganized.

This policy of co-operation to promote efficiency, however, resulted in the elimination of a considerable number of jobs. As the level of efficiency rose, the management found it unprofitable to employ as many workers. Many of the cutters of Hart, Shaffner and Marx, for example, lost their jobs. Each cutter displaced because of the more efficient system of production was paid a compensation of \$500 in return for the surrender of his right to the job. To meet this expenditure the firm contributed \$50,000 and the union half that sum.¹² Regardless of the desirable industrial and public consequences of this policy of union-employer co-operation, it was obviously bound to result in weakening the hold of the union over its members and in disadvantages to individual workers. By helping to bring about an increase in efficiency the union was thus partly responsible for technological unemployment in the clothing industry.

Unions in the clothing industry. Praised for what was called its "constructive attitude" toward the problems of the industry, the Amalgamated was hailed during the 1920's for having worked out the most advanced system of "constitutional government in industry." It received widespread attention for being among the first of the American unions to secure agreements from employers for the payment of unemployment insurance benefits and for its successful ventures in labor-banking. Its conduct of strikes was resourceful and intelligent. But it did not succeed in maintaining its membership throughout the decade. In 1920 it had a membership of 177,000; by 1923 this had declined to 130,000; in the year 1929 the membership was 110,000. Other unions in the clothing industry suffered similar declines in membership. Thus the Cloth Hat, Cap, and Millinery Workers' Union, which had a membership of 10,600 in 1920, had declined to 6,400 by 1929. That of the International Fur Workers' Union decreased from 12,100 to 2,800 during the same period. Most serious, however, was the decline in the International Ladies' Garment Workers' Union, which had 105,000 members in 1920 and 32,000 in 1929. The combined membership of the unions in the clothing industry was 506,000 in 1920 and only 375,000 in 1930.

THE RAILWAYMEN

Union-management co-operation did not occur only in the clothing industry. The railroads also witnessed an interesting step in this direction.

The B. & O. plan. Early in the 1920's the president of the International Association of Machinists converted an engineer, Otto S. Beyer, to the idea

¹² See discussion of dismissal compensation in Chapter 24.

of encouraging the union men to co-operate with the railroads to promote efficiency. Daniel Willard, president of the Baltimore & Ohio, was sympathetic to the plan, but the shopmen's strike of 1922 delayed its application. When the strike ended, however, the experiment was initiated, with the consent of the workers involved, at the Glenwood shops near Pittsburgh. Beyer was placed in full charge in his capacity as consulting engineer for the Railway Employees Department of the American Federation of Labor. The workers were promised that major repairs and the building of new locomotives would be done in the company's shops instead of by independent concerns. Thus the company's shopmen were supposed to secure more regular employment. It was also implied that the employees would share in the expected reduction in labor costs by receiving increased wages.

Under the plan, the membership of the joint co-operative committees was composed of an equal number of representatives of the unions and of the railroads set up in each shop. A joint co-operative committee of the whole system, meeting periodically, considered the recommendations of the local committees. The suggested improvements in shop practices proffered resulted in greater efficiency and improved shop conditions. Its success was so marked from the point of view of the company that it was soon extended to the entire Baltimore & Ohio system. After much publicity a number of important railroads, such as the Chicago and Northwestern and the Canadian National Railway Company, applied the plan to their own systems.

In return for their co-operation the unions received unquestioned recognition by the railroad companies at a time when they needed all the support they could obtain. Evidence indicated a great decrease in the number of grievances under the plan and fuller employment for the workers. The plan continued to operate to the close of the decade, though no satisfactory scheme was worked out to increase wages as the employees' share in the reduction in costs of operation. When the business of the Baltimore & Ohio suffered as a result of the depression, the railroad, rather than discharge any of its permanent employees, went over to a five-day week basis in 1930.

The scheme for union-management co-operation, however, had its opponents in the ranks of the union. Radicals declared that the union leaders were not only sacrificing the long-run interest of the workers but were helping to perpetuate an unsound system of operation. Left-wingers throughout the labor movement assailed union-management co-operation as evidence of the increasing conservatism of trade-union leadership and of collaboration with the welfare capitalism of employers.

The Transportation Act of 1920. When the War ended, the railroadmen supported the Plumb plan by which the federal government would own and operate the railroads. The Transportation Act of 1920, however, made pos-

sible the return of the roads to their private owners. It also set up a new system of settling labor disputes, providing for the appointment by the President, with the consent of the Senate, of a board of nine members to be known as the Railroad Labor Board, three of whom were to represent labor, three the railroads, and three the public. Under the Act employees were to attempt to settle their disputes in joint conferences with the management before bringing them to the attention of the Railroad Labor Board, which had authority to hand down decisions in disputed cases.

The Railroad Labor Board faced difficult problems from the beginning. Despite a rapid rise in the cost of living, for some years the railroad unions had withheld their requests for wage increases because of a promise made to the federal administration that they would make no attempt to change the wage structure during the conduct of the War. On the signing of the Armistice, however, many unionists felt that they were no longer bound by this promise. Mounting prices meant a decline in the real wages of railroad workers, and the administration attempted to satisfy the unions by promising that their grievances would be taken up as soon as definite machinery was established under a new transportation law. Efforts of the union officers to keep the membership in line did not always succeed in preventing insurgent strikes for higher wages.

Postwar railroad disputes. The shopmen, who had received an increase of four cents an hour as a result of a strike in 1919, were the first to have their demands considered by the Railroad Labor Board, which, in April, 1920, granted them a further increase of thirteen cents an hour. No sooner had the new Board dealt with this and similar problems than business began to decline, and the railroads, feeling the pressure of decreased income, sought to secure a reduction in wages from the Board. In June, 1921, the Board announced a wage cut, averaging 12 per cent and applying to nearly all railroad employees, to take effect on July 1. Fearing that the railroad managers were about to make additional requests for wage reductions, the unions met and directed that a strike vote be taken, ostensibly on the question of whether the workers should accept the Board's decision. In reality the vote was to determine whether the members would be ready to strike should further reductions be made. After conferences between the railroad managers and the unions in August, 1921, the railroads requested a reduction of 10 per cent in wages, to be passed on to the public in the form of lower freight rates. When the strike vote immediately ordered by the unions showed that 94 per cent of the men were in favor of quitting work, the strike date was set for October 30. President Harding asked the public representatives on the Board to do what they could to prevent the strike. After several conferences with the two sides, the Board announced, on October 25, that no requests for fur-

ther wage reductions could be handled by the Board until a considerable time had elapsed. Assured of this, the unions called off the strike.

The 1922 strike. With railroad revenues falling, the railroad managers pressed for further wage reductions, and in 1922 the Board was faced with its most critical problems. On June 6 the Board announced a reduction of seven cents an hour in the wages of the shopmen, which was equivalent to an average cut of 12 per cent and which was to go into effect on July 1. This aroused the shopmen, already excited by the fact that important railroads had their shopwork done by outside concerns employing nonunion men, in violation of the Board's orders. In April, the Railway Employees Department of the A.F.L., consisting largely of the railroad shopmen, had authorized the taking of a strike vote in the event that a satisfactory settlement was not reached. When this vote was taken in June the shopmen indicated an overwhelming readiness to walk out if the Board's decision were enforced.

Toward the end of the month the shopmen's unions notified the railroad executives that a strike would begin on July 1 unless the latter agreed to an immediate conference, ignored the wage cut order of the board, and stopped the practice of having shopwork done by outside concerns. These demands were flatly rejected by the executives, who declared that the strike would be conducted against the government and not against them. This, however, did not prevent nearly 400,000 shopmen from striking on July 1.

Chairman Ben Hooper of the Board, one of the public representatives, issued a statement to the effect that new employees who took the places of the strikers could not justly be called "scabs" or "strikebreakers," and asserted that public opinion and the government would protect the new workers and those who did not walk out on strike. Two days later the Board adopted a resolution declaring that the strikers had placed themselves beyond its jurisdiction and inviting recruits to take their places. The companies whose lines entered New York jointly decided that all strikers would be dropped from the pay rolls and would lose their seniority rights, a position soon adopted by nearly all of the railroads affected. Before long the question of whether the men's seniority rights would be restored when they returned to work became the sole issue of the strike.

Presidential interference. After reports came to Washington that the strikers had interfered with the mails, the President issued a proclamation on July 11 asserting that the workers who had chosen to take the places of the strikers had, by the decision of the Railroad Labor Board, "the same indisputable right to work as others have to decline to work." The government

and the people, he announced, were obliged to prevent interference with the maintenance of interstate transportation and the carrying of the mails.

Three days later the chairman of the Board succeeded in bringing together the leaders of the strike and some of the railway executives to meet in conference. The latter agreed to cease the practice of having work done in outside shops but refused to restore the strikers to their seniority rights. This spelled failure for the conference, and shortly afterwards the Board announced that it had ceased its efforts to end the strike in view of the impossibility of reconciling both sides.

A plan for settlement proposed by President Harding at the end of July provided that both parties were to recognize all decisions of the Board, that the carriers would withdraw all law suits growing out of the strike, that the employees were to be returned to work with seniority and other rights unimpaired, and that the railroads would not discriminate against the strikers. Although the railroad managers flatly refused to restore seniority rights, the shopmen accepted the President's plan. To provide a solution for the problem of seniority, President Harding then proposed that the men return to work and that the question in dispute be taken to the Railroad Labor Board. This time the shopmen rejected the proposal. President Harding defended his proposals in the course of an address to Congress, denouncing the lawlessness of the strikers and upholding the right of employees to remain at work. Since there were statutes providing means for the settlement of railroad disputes and forbidding conspiracies to hinder interstate commerce, he declared that he would invoke all laws, civil and criminal, against the offenders.

Continued reports of violence were discussed at cabinet meetings, where it was decided to obtain an injunction against the strikers. The Attorney General himself appeared before the Federal District Court in Chicago and on September 1 obtained perhaps the most sweeping injunction ever issued. Pointing out that acts of destruction had taken place, and that there was interference with interstate commerce and the carrying of mail, Attorney General Daugherty asserted that the maintenance of the strike by the union constituted an illegal conspiracy in violation of the Sherman Act and the Transportation Act. By striking against the decision reducing wages, he said, the unions had expressed contempt for the Railroad Labor Board and for the United States itself. Declaring that "no labor leader or capitalistic leader, or organization or association of any kind or kinds, or combination of the same, will be permitted by the Government of the United States to laugh in the frozen faces of a famishing people without prompt prosecution and proper punishment," he added that he would employ the powers of the government "to prevent the labor unions of the country from destroying the open shop."

A restraining order issued against the officers of the union, its members, and any persons aiding them, forbade the following: interfering with the railroad companies engaged in interstate commerce and with the transportation of the mails; preventing or attempting to prevent employees from entering employment or continuing it; conspiring to do these things or to inure, interfere with, hinder, or annoy any of the employees; "the taking of threats, intimidation, acts of violence, opprobrious epithets, jeers, suggestion of danger, taunts, entreaties, or other unlawful acts or conduct" towards the employees or officers of the companies or towards persons desiring to enter their employ; "aiding, abetting, directing, or encouraging any person or persons, organizations, or associations by letters, telegrams, telephone, word of mouth, or otherwise to do any of the acts aforesaid"; "inducing or attempting to induce by the use of threats, violent or abusive language, opprobrious epithets, physical violence or threats thereof, intimidation, display of numbers or force, jeers, entreaties, argument, persuasion, rewards, or otherwise" any person to quit his work or to refrain from entering it; engaging in, directing, or encouraging others to picket; "in any manner by letters, printed or other circulars, telegrams, word of mouth, oral persuasion, or suggestion, or through interviews to be published in newspapers or otherwise in any manner whatsoever, encourage, direct, or command any person" to quit employment of the railway companies or to refrain from entering it. In addition to a number of other acts which the restraining order prohibited, the officers of the Federated Shop Crafts were ordered not to issue any instructions, requests, public statements, or suggestions calculated to get anyone to leave the employment of the roads or to refrain from entering it, and "using, causing, or consenting to the use of any of the funds or monies of said labor organizations in aid of or to promote or encourage the doing of any of the matter or things hereinbefore complained of."

Settlement of the strike. Conferences between the union leaders and a number of railroad executives finally resulted in an agreement drawn up in September. This provided that all men be returned to the positions they held prior to the strike, that as many as possible be put to work at the existing rate of pay at once, that all be put to work within thirty days, except those who had been proved guilty of violence, and that disputes concerning seniority or involving any other question which could not be settled locally were to be referred for final decision to a committee of twelve representing both parties. There was to be no intimidation of either strikers or nonstrikers, and all law suits brought as a result of the strike were to be withdrawn. By the end of September seventy-eight roads had settled with the strikers on these terms, and a month later over one hundred had done

so. Meanwhile the strike continued on the other roads, and as late as March 6, 1923, government agents reported that 120,000 men were still out.

In terms of the wage issue the shopmen's strike was lost as soon as it began, but seniority rights were protected in the settlements concluded with nearly all of the important railroads in the country. On a number of roads, however, the railroad managers terminated their collective agreements with the shopmen and instituted antiunion campaigns. In some instances they set up company unions, which enabled them to handle grievances and to avoid dealing with independent labor organizations.

Railway Labor Act. In 1926, two years after the Railroad Labor Board ceased to function, Congress passed a new Railway Labor Act which provided for the settlement of railroad labor disputes and which made it the duty of all carriers and their employees to exert every reasonable effort to settle disputes. They were first to be taken up in conference between representatives of the carriers and the employees, and if such conferences were unsuccessful, the disputes were to come before boards of adjustment made up of representatives of both sides. These boards were to handle only disputes arising over grievances or the interpretation of agreements. If no settlement were secured as a result of their activities, either party might request the services of the Federal Board of Mediation, set up under the Act, which also had the right to take up a case on its own initiative. If it failed to effect an amicable settlement, it was to use its good offices to get the parties to consent to arbitration. If, in spite of all this machinery, a labor dispute threatened to interrupt interstate commerce, the Board of Mediation was to notify the President of the United States, who had the power to create a commission to make an investigation and report.

The Railway Labor Act also incorporated a provision of considerable value to labor in another respect: it required that there was to be no undue coercion, influence, or pressure exercised by either party upon the rights of the other to organize freely and to designate representatives for purposes of collective bargaining. This made it possible for the courts to forbid anti-union activities of railroads, and the use of the injunction to defend the employees' right to organize and elect representatives without coercion from employers was upheld by the United States Supreme Court.¹⁸

LABOR IN THE DEPTHS OF THE DEPRESSION

In 1929 America's naïve dream of permanent prosperity was rudely shattered. The years between 1929 and March, 1933, brought losses to its labor force without parallel in the history of our country. The total national in-

¹⁸ *Texas and New Orleans Railway v. Brotherhood of Railway Clerks*, 281 U. S. 548 (1930).

come of labor declined 41 per cent, from \$50,000,000,000 in 1929 to \$29,000,000,000 in 1933.¹⁴

The effects of the depression. Many people suffered great reductions in income because they could obtain only part-time employment, and it may be that the number of such persons far exceeded the number of those entirely without jobs. Part-time employment and wage cuts are reflected in the decline in total wages paid by all industries. Between 1929 and 1933, the drop came to 55 per cent, and was greatest in the manufacture of machinery—69.5 per cent. In the production of stone, clay, and glass products it was 67 per cent; in transportation equipment, 66 per cent; in iron and steel, 64 per cent; in railroad repair shops, 55 per cent; in rubber products, 52 per cent; in printing and publishing, 44 per cent; and in leather and its manufactures, 38 per cent.¹⁵ In Illinois the decline in total wages paid by manufacturing industries during 1929-33, was 61 per cent; in Ohio, 60 per cent; in Michigan, 59 per cent; in Pennsylvania, 56.5 per cent; in California, 54.5 per cent; in New York, 54 per cent; in Texas, 51 per cent.¹⁶

The decline in average weekly earnings shows even more clearly the effect of the depression on those workers who actually had some kind of job. In 1929 the average weekly earnings of all wage earners in twenty-five manufacturing industries were \$28.55; in 1933 they were \$17.71. The average earnings of women workers came to \$17.61 per week in 1929, and only \$12.35 in 1933, a drop of 30 per cent.¹⁷ The average annual income of all workers in a wide variety of industries dropped from \$1,563 in 1929 to \$1,059 in 1933, a decline of 32 per cent; in construction the drop was 44 per cent; in mining it was 31.5 per cent; in manufacturing, 31 per cent; and in electric light and power, 18 per cent.

The fall in the price level during the first years of depression was less than that in money wages, and the decline in real wages was, therefore, marked. Wholesale prices between 1929 and 1933 fell only 31 per cent. In farm products the decline was 51 per cent; in foods it was 39 per cent; in textile goods, 28 per cent; in house furnishings, 20 per cent.¹⁸ The decline in retail prices was generally less marked than that in wholesale prices. When we consider the decline in prices (31 per cent for all commodities) against the 41 per cent decrease in the national income of labor, the 55 per cent decline in the total wages paid by all industries, the 38 per cent fall in the

¹⁴ It should be noted that there were some months in 1933 in which business and employment expanded. U. S. Department of Agriculture, *Non-Agricultural Income as a Measure of Domestic Demand*, Statistical Supplement (August, 1937), pp. 4, 7-8.

¹⁵ United States Department of Commerce, *Statistical Abstract of the United States*, 1936, pp. 736-37.

¹⁶ *Ibid.*, pp. 760-64.

¹⁷ *Ibid.*, p. 329.

¹⁸ Computed from data of the United States Department of Labor, Bureau of Labor Statistics.

average weekly earnings obtained in twenty-five manufacturing industries, the economic impact of the depression upon the worker becomes clear.

Union membership. The trade-unions, for the most part weaker in 1929 than in 1920, found their ranks sharply depleted with the coming of the depression. Unemployed and part-time workers were unable to pay union dues. Widespread wage cuts, a great army of unemployed persons anxious for jobs, and an employer's labor market all combined to weaken unionism. Such conditions made it useless to resort to strikes, and many workers saw no point in remaining members of seemingly impotent organizations.

In 1929 the unions affiliated with the American Federation of Labor claimed a membership of 2,769,700. By 1933 the figure had declined to 2,317,500. The unaffiliated unions had a membership of 672,900 in 1929 and 655,500 in 1933. In these years the only important group of unions to experience an increase in membership were those in the public service—from 247,000 to 296,000. While the decline in the membership of unions in paper, printing, and bookbinding industries was small—from 162,500 in 1929 to 153,000 in 1933—membership in the excellently organized building construction unions fell from 919,000 to 583,000, with the greatest decrease occurring between 1932 and 1933. Transportation and communication unions, with 892,000 in 1929, had 609,000 in 1933. In the textile unions the decline was more than 50 per cent; the membership of unions in metals, machinery, and shipbuilding fell from 211,000 to 180,000.

Trade agreements and working conditions. Weakened unions, the tremendous increase in the number of workers seeking jobs, and the great decline in wage incomes and wage rates resulted in the widespread termination of trade agreements. Employers previously compelled to conform to the provisions of such agreements now no longer feared the power of labor. Strikes to compel them to adhere to agreements were not likely to be successful, and many of their workers dropped union membership as their incomes grew smaller. Thus, the workers lost their power to resist employers' attempts to depress wages and working conditions. What new agreements were made during the depression years were marked by poorer terms for labor, but many employers abandoned collective bargaining practices entirely. This in turn resulted in a further decline in levels of wages and working conditions. Employers, especially in competitive industries, were suffering from curtailed sales and an uncontrollable drop in prices, and their efforts to keep their heads above water had unfortunate consequences for the workers. Sweatshop conditions were reintroduced in many industries. Small plants, previously unable to compete with the more efficient larger concerns, now came into the market because they were able to procure labor at extremely

low wage rates. In industries in which economic conditions and the power of the unions prevented too great a depression of wages and working conditions, many employers closed their factories in the older industrial centers and set up small establishments in neighboring towns and villages. Thus they were able to draw their labor from the large numbers of unemployed workers who had no experience with unions and were willing to work under sweatshop conditions.

As the depression deepened, the condition of the unemployed and of many persons who had previously lived on incomes from small amounts of property became so bad that begging on a wide scale became common. The homeless unemployed often took up their residence in parks and abandoned buildings or in colonies on the outskirts of cities. The destitute unemployed made shelters of old packing boxes, discarded sheets of old iron or tin. These impromptu houses, made from odds and ends of salvaged materials, generally did not succeed in keeping the wind and rain out and were impossible to heat. In the cold weather these unfortunates relied for heat upon the open fires fed by wood and rubbish. Food was secured not only from the relief agencies, but from the back doors of restaurants, dump heaps, and garbage containers. The depression took its toll in millions of sick and undernourished, and in those who lost spirit and courage and came to doubt their ability to maintain themselves and their families.

The bonus army. A significant product of the effects of the depression was the bonus army of 1932. World War veterans had been fighting throughout the 1920's to secure the entire payment of bonuses promised by the federal government, and early in the Hoover Administration they obtained a measure by which they could get one-half of the amount of the bonuses, the remainder not to be paid until years afterwards. Most of the veterans were workers who felt the effects of the depression equally with other workers and who regarded themselves as entitled to special consideration because of their service to the country. The public was not unsympathetic, and politicians sensitive to the voting strength of the veterans supported them. Nevertheless the Hoover Administration refused to consent to the payment of the entire bonus on the ground that to do so would be dangerous to the financial structure of the country.

As destitution increased the unemployed veterans staged many demonstrations which reached a climax in the summer of 1932 when thousands of them from all parts of the country, traveling on foot, in box cars, and in broken-down automobiles, made their way to Washington. Despite the opposition of the Administration they arrived in the capital determined not to leave it until Congress, then in session, passed legislation authorizing the

payment of the entire bonus. Many among them demanded an increase in the bonus allotments.

They took up headquarters on the flats across the Anacostia River, where they built all sorts of impromptu shelters. Many veterans had brought their wives and children with them. Under the informal military organization soon adopted, a general staff planned the presentation of bonus appeals to Congress and to the President, and worked out methods of securing necessary supplies to keep the "army" alive. Food merchants and proprietors of restaurants and lunchrooms contributed to their support, contributions were solicited, and souvenirs were sold; thus in one way or another the bonus army managed to exist for some weeks in its makeshift camp. Then, without any indication of its plans, the Administration sent detachments of the federal army into the bonus army's headquarters and by the use of force and fire drove the veterans and their families out of Washington. In several hours the camp had been razed to the ground by flame.

The bonus army and its tragic end symbolized for the rest of the country the destitution and helplessness of the unemployed in the face of an unfriendly conservative government. The Anacostia flats in the summer of 1932 presented a typical picture of the effects of the depression. On swampy land unfit for human habitation, lived poorly clothed, ill-fed men, women, and children in hastily built shelters. They were the heroes and the families of the heroes who had been feted by a grateful nation less than fifteen years earlier.

Organization of relief workers. Many of the destitute had been members of trade-unions, and they realized that their status could be improved by organizing. Accordingly, before the depression was very old, those on relief formed organizations in order to protect themselves against attempts to decrease relief payments and in order to secure improvements in the administration of relief. These organizations helped in preventing discrimination against individual members. As the various governmental agencies established work projects for those entitled to relief the functions of the associations expanded, and they attempted to obtain the payment of prevailing wage rates on work relief projects. By 1932 two important organizations of a national character represented relief recipients and relief workers—the National Unemployed Councils, frequently subject to communist influence, and the National Unemployed Leagues, organized generally under the influence of socialists. Although as work relief projects developed, the hod carriers took in many members working at that trade and the musicians' union accepted musicians working on relief projects, the trade-unions, for the most part, did not bother to organize the unemployed. The unions in the building industry especially did what they could, however, to secure the payment of

prevailing wage rates on work projects, but principally because of their fear that otherwise general wage rates would be further depressed. The most important organizations of workers which developed during the years of the depression, it should be noted, were as a rule formed under radical auspices.

The middle class and the depression. The depression thrust persons who had not been wage earners into the ranks of the destitute. Members of the middle class who lost their property or their salaried or professional positions were frequently as helpless as the most humble laborers. Many lawyers, physicians, and engineers, who had previously been fairly well off, were without income and compelled to ask for relief. Those who were directly affected tended to become proletarianized; all became acutely conscious of the implications of the depression for the middle class as a class. After 1929 there was a deluge of books and pamphlets written by or addressed to middle-class and professional persons which dealt with proposals for reorganizing our economic system. The flurry of excitement aroused by technocracy is only one example of middle-class interest in schemes for economic and social reconstruction.

Further evidence of this increased proletarianization of the middle class appears in the data on membership in certain types of unions. For example, the American Federation of Teachers, which had 4,200 members in 1929 had increased its membership to 7,000 in 1932. By 1934 a union of architects, engineers, chemists, and technicians had been formed with a membership of 5,000. Journalists belonging to the Newspaper Guild in that year numbered 6,000.¹⁹ When business picked up in 1933, there was a great growth in union membership among retail clerks, insurance agents, bookkeepers, accountants, and stenographers—white-collar workers who had previously regarded themselves as members of the middle class. The Actors' Guild and the Screen Actors' Guild represented workers who in former years were not regarded as amenable to trade-unionism. Government employees, who had likewise been averse to organization prior to the depression, became members of unions; between 1929 and 1932 the total number of persons organized in government employment increased from 247,000 to 299,000. Even farmers, who had been traditionally regarded as middle class in outlook and temperament, began to join unions of share croppers, tenants, and dairymen. Small farmers severely affected by the depression were not slow to organize unions not essentially different in aim and method from those of labor organizations.

Thus, although the depression witnessed a great decline in the influence and membership of most trade-unions, it was marked by the growth of unions

¹⁹ Wolman, *op. cit.*, Chap. VII and pp. 172-97.

among professional people and those who had always been regarded as distinctly middle class in interest and attitude.

This historical survey of the American labor movement stops with 1933. The developments which follow the inauguration of President Franklin D. Roosevelt are dealt with elsewhere in this volume. The measures for relief and recovery inaugurated by the Roosevelt Administration; the attitude and policies of the government toward unions, employer practices, industrial disputes and wages and hours; the governmental agencies affecting labor; the tremendous growth in union membership and militancy and in the organization of mass-production industries; the critical labor disputes of the period and the use of the sit-down strike; the emergence of the C.I.O. and the C.I.O.-A.F.L. conflict; the political activities of organized labor since 1933—all these and other related developments are treated in Books III, IV, and V.

SUMMARY

1. The extent and power of trade-unionism have generally increased in periods of prosperity and declined in periods of depression. The rise in prices, resulting in a decrease in real wages, which generally occurs in a period of prosperity, and the increase in unemployment and the existence of an employers' market for labor in periods of depression are in large measure responsible for this. This pattern does not hold, however, for the 1920's and for the industrial depression of 1884-86, which witnessed a growth in union membership.

2. In periods of prosperity labor organizations have been mainly concerned with economic activities in which strikes, boycotts, and trade agreements come into play. In periods of depression, labor has sought to improve the wage-earners' lot through labor parties and legislation. In periods of prosperity the demand for their labor places the workers in a strategic position to make effective use of trade-union methods. In times of depression such methods cannot be effectively employed, and workers attempt to accomplish their ends politically.

3. The most effective organizations of labor have been those devoted to the immediate improvement of the worker's status. In the past such organizations have flourished among the highly skilled craft workers rather than among the unskilled. With the development of new processes the old crafts tend to disappear, and in recent years the unskilled workers in mass-production industries have been reached by organization.

4. Organizations whose essential purpose has been to promote class consciousness and give the workers a revolutionary function have thus far been short-lived and ineffective in securing long-time gains.

5. From its beginning the labor movement has been met by the determined opposition of employers, frequently organized in employers' associations. This opposition has found partial expression in organizations and techniques paralleling those of labor. As the influence of unionism grew, the intensity of the employers' opposition increased.

6. The state has frequently come to the aid of the employers in industrial struggles, especially through the courts, which perfected the technique of the injunction process by the 1920's until it constituted one of the most effective weapons against attempts to organize. State and federal troops and local and county police authorities have also aided employers in time of strikes. There are instances, of course, where governmental influence serves to protect the rights of workers and to promote collective bargaining and the peaceful settlement of disputes.

7. Considerable violence marks American labor history. Picketing activities, the intervention of state or federal troops, the activities of special guards and strikebreakers, and intense exploitation of the workers have all contributed to the occurrence of labor violence.

8. Governmental authorities, employers, and the "respectable" elements in American society have normally joined forces in fighting radicalism both in and outside the ranks of labor, as the Haymarket affair, the Mooney-Billings Case, and the history of the I.W.W. indicate, even at the cost of destroying traditional American rights and liberties and fostering "vigilantism." In general the vast majority of organized workers have been quite unsympathetic to the various radical philosophies with which they have come in contact.

9. The war period showed how influential a well-organized labor movement can be when its co-operation with the government is essential. The postwar period demonstrated as clearly how completely ineffective such influence may become with the passing of wartime conditions and of government support.

10. The structure, policies, and leadership of American trade-unions have critically affected their growth and power.

11. The depression which began in 1929 offers an insight into the destructive effects of widespread unemployment and suggests how a period of rapid change may produce conditions which develop new types of organizations appealing to new groups of workers.

12. The intensely dynamic character of the American industrial scene means that each decade creates new problems or presents old problems in a new light. Organizations well adapted to one set of conditions, becoming outdated and unrealistic, fail to function in a new environment, while the philosophy, structure, and methods of American trade-unionism have neces-

sarily changed as new conditions have arisen. But it is clear from the past that changes have very frequently been made with great reluctance, have too often been made too late, and have caused serious conflict within the labor movement.

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QUESTIONS

1. What forms has the American labor movement taken?
2. What social, economic, and political factors have influenced the American labor movement?
3. What relationship is there between the business cycle and the changing activities of labor?
4. What do you understand by the expression, "the middle-class character of the American labor movement"?
5. Why is it sometimes said that the American labor movement began in 1827?
6. Trace the relationship between the labor movement and agrarian reform during the nineteenth century.
7. To what extent has the labor movement been influenced by philosophies of reform? Who were some of the leading reformers connected with the labor movement, and what were their theories?
8. In what respects did trade-unionists and reformers differ?
9. How do you account for the development of permanent national unions and of national federations?
10. How many national federations has organized labor produced? What forms have they taken?

11. In what ways did the attitudes of the courts toward the activities of labor change during the nineteenth century? What brought about the changes?
12. Trace the struggle of organized labor for shorter working hours in the nineteenth and twentieth centuries. What forms has it taken? What have the results been?
13. Why is Ira Steward's eight-hour theory sometimes spoken of as revolutionary?
14. Why did labor support the Greenback movement?
15. Compare the structure, aims, methods and achievements of the National Labor Union, the Knights of Labor, and the American Federation of Labor.
16. How do you account for the way in which the membership of the K. of L. grew?
17. What was responsible for the decline of the K. of L.?
18. What is the significance of the following episodes in American labor history: the Molly Maguires, the great strikes of 1877, the Haymarket affair, the Pullman strike?
19. Discuss the origin and growth of the A.F.L.?
20. What contributions did Powderly, Gompers, and Strasser make to the American labor movement?
21. What are the connections between the revolutionary and the labor movements in America?
22. Why were trade-unionists and socialists so frequently in conflict?
23. Trace the role of the federal government in five major industrial conflicts since the Civil War.
24. Discuss the formation and the decline of the I.W.W.
25. What contributions have the unions in the clothing industries made to American trade-unionism?
26. How do the attitudes of the courts toward trade-unionism change in the course of the twentieth century? What brought about these changes?
27. In what respects does the history of the railroad unions differ from that of other important organizations?
28. How did the World War affect the labor movement?
29. What distinctive labor problems emerged during the War years?
30. What new relationships developed between government and labor during the War years?
31. What were the major governmental agencies concerned with labor during the War?
32. What is the significance of the Mooney-Billings case?
33. How do you account for the wave of postwar strikes? What do they all have in common?
34. Discuss the causes, conduct, and consequences of two postwar strikes.
35. What role did the government play in the postwar strikes?
36. Why did unionism decline in the 1920's?
37. What happened to the unions of miners, railwaymen, and workers in the clothing industry during the 1920's?
38. What do you understand by the terms union-management co-operation, labor capitalism, welfare capitalism, and the "American Plan"? Explain the development of each of these.
39. What role did the radicals play in the labor movement of the 1920's?

40. To what extent did union structure and leadership contribute to the problems of organized labor during the 1920's?
41. How did the depression affect the American worker?
42. What effect did the depression have upon the organized labor movement?
43. What do you understand by the term "proletarianization of the middle-class"? To what extent has this occurred?
44. What conflicts have occurred within the A.F.L. since the World War?
45. How can you account for the limited degree of organization achieved by trade-unions throughout the history of the labor movement?

BOOK
THREE • • *to the* LABOR PROBLEM

THE WORKERS' APPROACH

THE PRESENT STATUS OF 14 . . . UNION ORGANIZATION

TRENDS IN THE OCCUPATIONAL DISTRIBUTION OF AMERICAN WORKERS

A clear picture of the occupational distribution of American workers is necessary for any complete understanding of the recent spectacular union growth. Just how many industrial workers are there and how many are organized? What of white-collar workers? Have large-scale mechanization of industries and the expansion of the service trades greatly altered the character of the union movement?

During the sixty years from 1870 to 1930 the working population of America increased almost fourfold. The 12,500,000 "gainful workers" listed by the Census of 1870 had reached nearly 49,000,000 by 1930. Many new industries had come into existence;¹ some old industries had greatly expanded their demand for labor; through mechanization or through declining demand, others had come to require a smaller portion of the nation's workers; still others had disappeared. The change in occupational groups was marked. Those employed on farms (whether as farm owners, tenants, or hired workers) constituted in 1870 nearly half (47.1 per cent) of the working populace; in 1930, about a fifth (21.4 per cent). Industrial workers, in 1870, numbered but little more than a quarter (26.6 per cent of the gainfully employed); in 1930 they constituted nearly two-fifths (37.9 per cent). The most spectacular rise was, however, in the lower-salaried group (clerks, stenographers,

¹ See Book I.

and kindred occupations), which numbered in 1870 but 2.5 per cent of the gainful workers, but by 1930 included more than one-seventh (14.6 per cent) of the working population. Professional workers likewise increased in number and relative importance. In contrast, the proportion of servants to the total declined during the period. The detailed figures for 1870, 1910, 1920, and 1930, together with the percentages in each field in each of these years, are given in Table 28.

Looking at the over-all picture we note that in 1930 the lower-salaried group absorbed nearly six times (584 per cent) the proportion of workers

TABLE 28

DISTRIBUTION OF GAINFUL WORKERS BY OCCUPATIONAL GROUPS

Occupation	1870	Per Cent Distribution	1910	Per Cent Distribution	1920	Per Cent Distribution	1930	Per Cent Distribution
Farm laborers....	2,885,996	23.1	6,143,998	16.1	4,178,637	10.0	4,392,764	9.0
Farmers....	3,000,220	24.0	6,229,161	16.3	6,463,708	15.5	6,079,234	12.4
Proprietors and officials.....	581,378	4.6	2,879,023	7.5	3,168,418	7.6	4,270,856	8.7
Professional.....	414,708	3.3	2,074,792	5.4	2,760,190	6.6	3,845,559	7.9
Lower-salaried....	309,413	2.5	2,393,620	6.3	3,985,306	9.6	7,116,814	14.6
Servants.....	975,734	7.8	1,572,225	4.1	1,270,946	3.1	1,999,133	4.1
Industrial wage earners.....	3,328,351	26.6	14,556,979	38.2	17,648,072	42.4	18,512,640	37.9
Unclassified..	1,010,114	8.1	2,317,538	6.0	2,138,971	5.1	2,612,920	5.4
Total.....	12,505,923		38,167,336		41,614,248		48,829,920	

Source: T. M. Sogge, "Industrial Classes in the United States in 1930," *Journal of the American Statistical Association*, XXVIII (1933), 199.

that it did in 1870; the professional group 239 per cent; proprietors and officials 189 per cent; industrial wage earners 142 per cent. These advances had been made at the expense of the other occupational groups. The proportion of servants was but 53 per cent of what it had been in 1870; of farmers, 52 per cent; of farm laborers, 39 per cent.

For the shorter period, 1920 to 1930, there was a decline in the relative importance of farmers, farm workers, and industrial wage earners. This decade brought the lower-salaried workers into their own, their proportion of the total increasing from 9.6 per cent in 1920 to 14.6 per cent in 1930. The proportion of professional workers, servants, and proprietors and officials also rose in the ten-year period, although less sharply.

Underlying these changes are several important factors. The rapid mechanization of agriculture helped to displace much agricultural labor. The

mechanization of industry, on the other hand, has contributed to the increase in the percentage of industrial wage earners over the sixty-year period. The sheer complexity of the economic system, quite as much as the higher living standards resulting from it, accounts for the tripling of the proportion of nonmanual workers during the sixty years.² More executives were needed. More engineers were required. More "paper workers" had to be called upon. Moreover, the vast growth of merchandising and advertising caused sharp increases in the proportion of people engaged in distribution. Then, too, the economic surplus of the country expanded the job-possibilities in teaching, entertainment, and other trade and "service" occupations.

Focusing more directly upon the distribution of workers in 1930, we may note the distribution in the various occupational groups on that date. Table 29, drawn from a survey by A. M. Edwards of the Bureau of the Census, divides the gainful workers into ten occupational groups.

TABLE 29
DISTRIBUTION OF GAINFUL WORKERS IN 1930
(Figures are in thousands)

	MEN	WOMEN	TOTAL WORKERS	PER CENT OF TOTAL WORKERS
Working-class groups				
Skilled workers and foremen.....	6,202	81	6,283	13
Semiskilled workers.....	5,448	2,529	7,977	16
Unskilled farm workers.....	3,746	646	4,392	9
Unskilled factory and building workers.....	3,249	126	3,375	7
Unskilled workers—unclassified.....	2,872	31	2,903	6
	21,516	3,413	24,929	51
Borderline groups				
Professional persons.....	1,498	1,448	2,946	6
Farmers (owners and tenants).....	5,749	263	6,012	13
Clerks and kindred workers.....	4,877	3,072	7,949	16
Servants.....	1,026	2,313	3,339	7
	13,150	7,094	20,244	42
Proprietors, managers, and officials.....	3,411	243	3,654	7
TOTALS.....	38,078	10,752	48,830	100

Data drawn from article by A. M. Edwards of the Bureau of the Census in *Journal of the American Statistical Association*, XXVIII, 377-87.

This table suggests the difficulties of union organization. Only about half (24,900,000) of the gainful workers were definitely in "working class" groups. Of these, over four million were farm workers who were largely outside the range of effective organizational work. In the "border-line groups" many, such as independent professionals (doctors or lawyers) and farm

² The professional, lower-salaried, proprietary, and official groups increased from 10.4 per cent of the gainful workers in 1870 to 31.2 in 1930. See Sogge, *loc. cit.*, p. 202.

owners, were not likely to join trade-unions. Servants are so scattered in their employment and so dominated by the personal relationship of their task that they have seldom unionized, though there has been some growth of union membership in this field recently. Clerks, office workers, and certain professional workers have, like the teachers or actors, occasionally entered unions, but the "middle-class psychology" of this group of nearly eight million workers has prevented it from responding readily to organizing campaigns. Of the gainful workers in 1930, 22 per cent were women, who are as we have previously observed, difficult to organize.

What are the effective limits of unionization? Of the total number of gainfully employed, only about twenty or thirty million appear at present to be within the orbit of collective bargaining. The border line is most inexact and changes rapidly as organizing campaigns continue. Farm workers employed in groups or on a share basis, office workers, and even professional groups have begun to think in collective terms. The notion of individual bargaining relationships still predominates in small communities and on white-collar jobs, but the scope of unionism is markedly broadening.

THE GROWTH OF UNIONIZATION 1890-1939

Over eight million workers were enrolled in American trade-unions by the end of the thirties. Membership in labor organizations, previously concentrated in such fields as mining, transportation, the building trades, and skilled manufacturing crafts, was expanding among other occupational groups. Mass-production industries were being unionized. Substantial white-collar and professional workers' unions were appearing.

Unionism has advanced during the last half-century at a most uneven stride. When business has been brisk, when working groups, especially the unskilled, have been swept by a new wave of militancy, or when (as since 1933) the government has assisted the movement, the gains have been important. Although in the past these gains have been followed by a decline in union membership, some part of the new membership has always been held until the next spurt has passed considerably beyond the earlier peak.

Union membership is but a rough approximation of union strength. The reporting membership figures given by the union are not always accurate; unions sometimes overstate their membership, especially during depression periods to hide their weaknesses, and sometimes they understate it to save money since the American Federation of Labor uses the reported membership of its affiliated organizations as the basis for dues and assessments. The paid-up membership also fails fully to reflect union strength, for workers may, because of strikes or unemployment, fall behind in the payment of dues or drop out of the union entirely.

Subject to these qualifications, the figures for union membership in selected years are given in Table 30.

The first substantial and enduring gains were made in the decade beginning in 1894, when unionization, especially among skilled workers, brought the membership total for the first time above the two-million mark. Little growth occurred from 1904 until 1910, when a new spurt developed which, though checked during 1914 and 1915, continued to a five-million

TABLE 30
THE GROWTH OF UNIONISM, 1890-1939

Year	Total Membership of all Unions	Members of A.F.L. Affiliates	Members of C.I.O. Affiliates	Membership of Nonaffiliated Unions
1890	372,000	225,000	—	150,000
1900	869,000	625,000	—	244,000
1910	2,141,000	1,587,000	—	554,000
1920	5,048,000	4,093,000	—	955,000
1930	3,393,000	2,745,000	—	648,000
1931	3,358,000	2,743,000	—	615,000
1932	3,144,000	2,497,000	—	647,000
1933	2,793,000	2,318,000	—	655,000
1934	3,609,000	3,030,000	—	579,000
1935	3,928,000	2,300,000	1,050,000	578,000
1936	4,575,000	2,500,000	1,500,000	575,000
1937	7,159,000	2,861,000†	3,718,000†	580,000
1938	—	3,623,000†	3,767,000*†	—
1939	—	4,006,354†	4,000,000†	—

† Reported membership.

* The I.L.G.W.U. membership is deducted from the official C.I.O. figures.

Source: For 1890, Leo Wolman, *The Growth of American Trade Unions, 1880-1923*, National Bureau of Economic Research, Publication No. 6. New York. 1924. P. 32; for 1900-1934, Leo Wolman, *Ebb and Flow in Trade Unionism*, National Bureau of Economic Research. New York. 1936. Pp. 138-39; for 1935-1936, Carroll R. Daugherty, *Labor Problems in American Industry*. Houghton Mifflin Company. Boston. 1938. P. 405; for 1937-39, the reported membership of A.F.L. and C.I.O. and an estimate of independent union strength.

peak in 1920. Many of the new members enrolled under wartime conditions were quickly lost with the sharp business decline of 1921 and the subsequent open-shop drives. Between 1920 and 1933, as we have seen, labor was largely engaged in an unsuccessful fight to hold its ranks. By 1932, unprecedented unemployment had brought most unions to a position far weaker than that of twenty years before, though this decline is not suggested by the optimistic membership reports they published. Even more spectacular, however, has been union growth since 1933, stimulated by favorable New Deal policies and the emergence of the Congress of Industrial Organizations as a militant agency for the unionizing of mass-production industries. In a five-year period, nearly five million new members have flocked into union ranks.

In 1938 both the A.F.L. and the C.I.O. reported substantial membership increases. If, however, one deducts from the 1938 C.I.O. total the 250,000 members of the International Ladies' Garment Workers' Union which withdrew in the fall of that year, both organizations would still appear to be of about the same size. The greatest membership gains recorded for A.F.L. unions were among the teamsters (98,000), the hotel and restaurant employees (68,000), and the machinists (52,000). Notable gains were also reported in the building trades and in the white-collar unions. Forty-six thousand unionized retail clerks were in the A.F.L., more than double the total of the preceding year. The teachers' and the actors' unions likewise forged ahead. The largest advances in the C.I.O. were in the electrical, the communications, and the packing-house industries.

THE NEW DEAL AND UNION MEMBERSHIP

Union membership was greatly accelerated in many fields by the passage of the National Industrial Recovery Act, which workers interpreted as an encouragement to join unions. Section 7(a), which asserted the right of workers to choose their own representatives for collective bargaining purposes, made many believe that the government wished them to organize. At union rallies the slogan frequently was to "be patriotic"; "join the union"; "assist the government to make the N.R.A. a success." Best results were obtained in fields in which the unions had effective organizing machinery which could capture and solidify the workers into union locals. Only a temporary spurt appeared in those sections in which either leadership was faulty or the conditions of the trade were such that the union could not get a foothold because of the superior strategic position of the employer. One factor which assisted union organization during this period was the availability of federal relief for many of those on strike. Although relief was often given grudgingly, on numerous occasions it allowed workers to withhold their labor without the advantage of solid union backing.

It is interesting to summarize the effects of the period from 1932 to 1935 upon the membership of A.F.L. unions. As noted above estimates are subject to considerable error. Furthermore, one should realize that the failure of certain unions to gain rapidly might have been due to the fact that they were already well entrenched. In other cases a sharp rise in membership might not affect the relative minority position of a given union in the trade.

Of the unions affiliated with the Federation both in 1932 and 1935, thirteen doubled their membership; fourteen increased their membership by more than 50 per cent but less than 100 per cent; nineteen advanced their membership by less than 50 per cent; twenty-seven decreased in membership by less than 50 per cent; while four decreased in membership by more than 50 per cent. Ten unions reported to the Federation a constant membership.

Among those unions registering the most spectacular rises we find the brewery, soft drink, and cereal workers, whose growth was caused mainly by the repeal of Prohibition. Other small unions which advanced were the jewelry workers, the leather workers, the paper makers, the sheep shearers, the tobacco workers, and the glove workers, a number of these recording a fivefold increase or more. The really large gains under the Recovery Act, however, were registered by the Ladies' Garment Workers, the Mill, Mine, and Smelter Workers, the Oil Field Workers, the Textile Workers, and the United Mine Workers.

The International Ladies' Garment Workers' Union which in 1932 had a membership of 40,000, reported 160,000 in 1935 after an aggressive organizing campaign. Not only had this organization signed contracts in the principal markets; it had also gone out into the smaller towns to seek those employers who had earlier run away from the urban centers. The Mine, Mill, and Smelter Workers, successor to the militant Western Federation of Miners, re-established after extensive battles something of the old prestige of that organization in the Western mining camps, particularly in the copper fields. The oil-field workers' union was practically nonexistent in 1932, reporting but 400 members; by 1935, the membership was 42,900. The United Textile Workers counted its membership in 1932 as 27,500 and in 1935 as 79,200.

The United Mine Workers, which reported a membership rise from 308,000 to 400,000, understated its real membership gain. The miners' organization was at a low ebb in 1932; its membership was possibly 50,000 to 60,000, the reported figures being mere window dressing. The N.R.A. brought almost instant revolt in the bituminous mine camps against the low wages and unfair practices that had followed the destruction of the once-powerful union organization. With a militant membership striking or threatening to strike in a key industry, it was possible for the miners' leaders to negotiate contracts not only in the territory which they had lost but in areas in which they had not held union contracts for years. The membership of the United Mine Workers in 1935 was, in reality, in excess of 500,000.

Substantial but less marked increases were recorded in other fields. The Building Service Employees, the Firemen and Oilers, the Flint Glass Workers, the Meat Cutters and Butcher Workmen, the Metal Polishers, the Potters, the Pulp, Sulphite, and Paper Mill Workers, the Teachers, and the Teamsters rose substantially in union membership. Some of these increases did not, however, place the union in a powerful position in the industry. In the boot and shoe field, for example, the union had in 1935 but 25,900 workers. The Iron, Steel, and Tin Workers gained only from 5,000 to 8,600—a negligible fraction of those employed in the steel mills alone. The Teachers' union, with

its advance from 7,000 to 12,000, was still a small organization. On the other hand, the Teamsters, rising from a membership of 82,000 to 137,000, increased the membership of an already substantial union.

It is significant to note that the advance of unionization occurred both among craft organizations and among those organized on an industrial basis, although the most spectacular gains seemingly were made by industrial or semi-industrial unions, such as the International Ladies' Garment Workers' Union, the Miners' Union, the United Textile Workers, the Brewery Workers, the Oil Workers, and the Mill, Mine, and Smelter Workers. In many fields craft organizations already embraced a substantial portion of those eligible to join. They were not in a position to organize effectively the mass-production workers, nor were many of them particularly interested in adding semiskilled or unskilled workers to their memberships.

Seventeen unions advanced their membership by less than 50 per cent. Almost without exception these were craft organizations: the asbestos workers, the bricklayers, the draftsmen, the operating engineers, the bakery workers, the railway clerks, the longshoremen, the seamen, the molders, the machinists, the Air Line Pilots' Association, the Boilermakers, the Bridge, Structural, and Ornamental Iron Workers, the Journeymen Tailors, the Lithographers, the Switchmen, and the Wall Paper Crafts.

Ten unions reported a constant membership to the Federation—the Blacksmiths, the Carpenters, the Elevator Constructors, the Glass Bottle Blowers, the Musicians, the Pavers and Rammermen, the Roofers, the Stage Employees, the Stone Cutters, and the Upholsterers. One should not draw from this the conclusion that union membership in these crafts was actually stable. The Blacksmiths have since 1924 paid per capita dues on 5,000 members; the Elevator Constructors since 1927, on 10,200; and the Pavers and Rammermen since 1922, on 2,000. In general these constant memberships reflect only the lax enforcement by the Federation of its rules concerning voting and dues payment. Though data are not available, it is probable that the majority of these crafts gained under the N.R.A.

A number of unions, including some in important industries, reported a decreased membership during this three-year period. Reasons for the decrease were diverse. The failure of the construction industry to respond was perhaps as significant as any other cause. Some unions lost ground due to persistent technological encroachments. Others, in transportation, felt the steady contraction of railroad activities during the period. Of the four organizations hardest hit (the memberships of which were more than cut in half) three were building trades—the lathers, the pattern makers, and the plasterers. The Cigar Makers' International Union, with which Samuel Gompers started his activities, continued the steady decline from its once-proud posi-

tion, reaching in 1935 its low point of 7,000—less than half of its figure three years before. The coming of the machine in cigar making, the failure of the union to adapt itself to new conditions, and the declining importance of the cigar industry were contributing factors.

Among building trades unions whose membership decreased by less than 50 per cent were the Electrical Workers, the Hod Carriers, the Marble Workers, the Painters, the Plumbers, and the Sheet Metal Workers. The railroad unions which declined in membership include the Maintenance of Way Employees, the Railway Carmen, the Railroad Telegraphers, and the Sleeping Car Conductors. Many of the other declining unions are of interest. The Actors' Union felt the effects of the depression and the encroachments of Hollywood. The Barbers likewise continued a decline that had been going on since 1929. The Retail Clerks, though stimulated by the N.I.R.A., still remained a small union, their membership declining from 8,700 to 7,200. Even this membership tended to center in cities and towns where other unions had acquired sufficient strength to stimulate the organization of retail clerks. The presence of the printing unions on this list reflects the decline of advertising and printing during the depression. The Photo Engravers, the Printing Pressmen, the Stereotypers, and the Typographical Unions all gave ground. The Street Railway Employees likewise lost membership despite the inclusion of motor-coach operators in their union.

The effect of the N.R.A. upon unions is by no means fully reflected in the figures of changes in membership in established A.F.L. organizations during the three-year period. The Federation added new unions to its enrollment and lost others. The most important union coming into the Federation was the rapidly growing Amalgamated Clothing Workers of America.

The sharp advance in union membership between 1936 and 1940 both in the A.F.L. and the C.I.O. has made difficult close comparisons of strength. Both organizations gained markedly through the outlawing of company-dominated unions by the National Labor Relations Act of 1935. And in the bitter and intense race for supremacy it is more than likely that the total union membership of the country mounted more rapidly than it would have had there been no split. Many employers, finding C.I.O. organizers at their gates, rushed to the A.F.L. and asked to sign a contract with that more conservative body. Contests of this nature are still being fought.

Suspensions and secession have increased the difficulty of calculating the strength of the respective union forces. The mushroom growth of the C.I.O. in many of its branches, notably in steel, rubber, and autos, made it exceedingly hard to estimate the effective membership. This uncertainty was enhanced in 1937 by a sharp industrial decline.

At the close of 1937, the actual membership of unions was estimated by one writer as follows:³

C.I.O. unions.....	3,727,350
American Federation of Labor unions.....	3,441,340
Unaffiliated unions.....	518,397
Total.....	7,687,087

Though the A.F.L. and the C.I.O. numerical strength was apparently approximately equal, their spheres of influence differed greatly. In the main, the skilled crafts remained in the Federation and the industrial unions went with the C.I.O. The contest between the two organizations became especially keen in the newly organized areas. The C.I.O. strongholds are graphically portrayed in Chart 6.

THE AREAS OF UNION ORGANIZATION

The extent to which the different branches of American industry have been organized gives us a much clearer view of union progress. Such a survey also shows where the organized labor movement first solidified its position and where it has but recently become effective. This material is presented in Table 31, which indicates the early and persisting character of unionism in some industries and its tardy development in others.

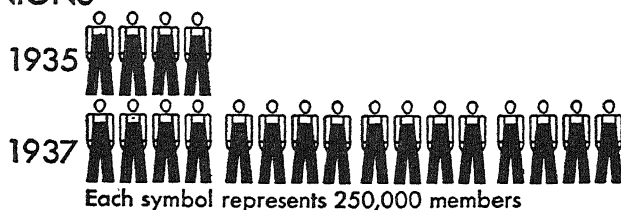
Among the major industries which have long been highly unionized are mining, especially coal, transportation (other than motor transport), and the building trades. In the manufacturing industries, printing, publishing, and clothing stand out as having especially successful unions.

At the other end of the scale, one notes the low point of unionism in the field of trade and service, where but 3 per cent of the workers were organized in 1930. White-collar workers tended to remain aloof from unionism. In public service and in professional services, unionism was likewise poorly developed, though notable gains have been made since 1935 in the former. Workers organized to exert political pressure because of the threat of falling standards in public service brought on by the depression. In manufacturing industry as a whole in 1930 about one worker out of eight was organized. In basic industries such as iron and steel, automobiles, and textiles, unionism had little strength. Actually, for all occupations, only nine of every hundred workers were union members in 1930.

It is quite evident that up to 1930 unionism gained most ground where craft skill remained an important factor, although powerful unions in some fields (such as clothing and the extraction of minerals) suggested that other

³ These figures differ considerably from the official estimates. Edward Levinson: *Labor on the March*. Harper & Brothers. New York. 1938. P. 315.

ALL C.I.O. UNIONS



THE C.I.O. IN SIX BASIC INDUSTRIES



STEEL

1935
BEFORE
C.I.O.



1937
SINCE
C.I.O.



TEXTILE

1935
BEFORE
C.I.O.



1937
SINCE
C.I.O.



AUTOMOBILE

1935
BEFORE
C.I.O.



1937
SINCE
C.I.O.

ELECTRICAL
APPLIANCES
AND RADIO

1935
BEFORE
C.I.O.



1937
SINCE
C.I.O.



CITY TRANSPORT

1935
BEFORE
C.I.O.



1937
SINCE
C.I.O.



RUBBER

1935
BEFORE
C.I.O.



1937
SINCE
C.I.O.



641 IPEU

Each symbol represents 25,000 union members

PICTORIAL STATISTICS, INC.

CHART 6.—Organizing the Unorganized

than skilled workers could be organized. The degree to which unionism is able to develop in a field is, of course, in part a matter of union structure, union leadership, and union policies. It is also influenced by the government. But underlying these factors one may note that the several industries differ greatly in their ability to resist the growth of trade-unionism. Railway transportation, for example, is under the necessity of maintaining steady operation. The possibility of damage to rolling stock and the difficulty of securing qualified strikebreakers lead managements to seek amicable relationships

TABLE 31

PER CENT OF UNIONIZATION IN CERTAIN MAJOR INDUSTRIES IN SELECTED YEARS*

INDUSTRY	PER CENT OF WORKERS WHO WERE UNION MEMBERS			
	1910	1920	1930	1937 (Sept.)
All Industry (including agricultural)	9	18	9	23
All Industry (excluding agricultural)	10	19	10	24
Mining	28	40	22	25
Coal	37	51	33	95
Metal	15	14	3	40
Manufacturing (including construction and railway shops)	11	22	12	30
Transportation	20	40	22	45
Railroads, steam	28	53	39	60
Street railways	24	50	58	75
Motor transportation	5	12	6	15
Water transportation	33	81	30	75
Communication	9	20	8	15
Trade and service	2	5	3	10

* Data for 1910, 1920, and 1930 are from Leo Wolman, *Ebb and Flow in Trade Unionism*, National Bureau of Economic Research. New York. 1936. P. 118. The 1937 figures are estimates by Daugherty.

Source: Daugherty, *op. cit.*, p. 408.

with organized labor. The result is that unionism at first tended to be entrenched in the operating crafts in this field.

In the building trades labor also has certain strategic advantages. The employer is typically under contract to complete the work on schedule and is subject to penalties for failure so that delays are costly. Moreover, the tendency of certain of the building trades-unions to act in concert, the superior craft skill of their members, and the potentiality of violence in heated labor disputes were all factors that influenced employers toward recognition.

The mining industry offered one of the more strategic strongholds for unionization. Until recently the miner was a relatively skilled individual who lived in a comparatively compact mining community. The importation

of strikebreakers was difficult, because of the reluctance of workers in other fields to take employment in this dangerous trade, because of mining legislation, and because of the ability of the miners to maintain a strong picket line and to apply vigorous social ostracism. The mechanization of mines, the emergence of coal substitutes, the automobile (which made transfer of workers easy and broke the isolation of the mine community) were among the factors which had greatly weakened the miners' position in 1930. Under the N.R.A., however, their old strength was regained.

One means of testing union strength is to ascertain the areas in which unions have signed written agreements with employers concerning wages, hours, and the terms of employment. While such agreements often cover many workers that are not actual union members, at least they indicate the extent of union bargaining arrangements. In Table 32 the results of a study of the United States Bureau of Labor Statistics are summarized.

In Table 32 it will be noted that A.F.L. unions occupy the dominant position in four of the fields which are almost entirely under written agreements—the brewery workers, the musicians, the performers, and newspaper printers.⁴ The C.I.O. unions likewise control in four fields—the men's clothing workers, the miners, the fur workers, and the flat-glass workers. In two fields, women's clothing and railroad train service, independent union organizations occupy the controlling position.

Among the industries having a large portion of their workers under written agreement are aluminum, automobiles, building construction, electrical equipment, rayon, iron and steel, machinery, and rubber. It is in these fields, more than in the first group, that the more recent accessions to union strength have been secured. Substantial union gains have also been made in recent years in the third and fourth categories.

The nature and size of the occupations which are almost entirely without agreements are significant. The four million agricultural workers have been but slightly touched by the union movement, though gains have been made in the "commercial farming" area. Organization has not been extensive among the nearly four million servants. Add to these the four million proprietors and the six million farm operators not listed in the tabulation and we have eighteen millions who are either by the nature of their job or by tradition outside the ranks of organizable labor. There are nearly four million professional workers, most of whom are members of some type of organization, but it would be a stretch of the imagination to consider the typical medical or bar association as being allied to labor. A large share of the two million white-collar workers in the low-salary group is, by tradition, alienated from organized labor. Some workers in small offices would consider union participation as personal disloyalty; others think of unionism

⁴ The typographical union was, however, suspended from the A.F.L. in 1939.

TABLE 32

CLASSIFICATION OF INDUSTRIES ACCORDING TO THE EXTENT OF SIGNED UNION AGREEMENTS (1938)

(In parentheses and added by the authors is the affiliation of the union holding dominant membership in the industry)

1	2	3	4	5
<i>Almost entirely under written agreements:</i>	<i>Large proportion of workers under written agreement:</i>	<i>Half of workers under agreement:</i>	<i>Moderate proportion of workers under agreement:</i>	<i>Almost entirely without agreement:</i>
Breweries (A.F.L.)	Aluminum (refining and fabrication) (C.I.O.-A.F.L.)	Baking (bread, cracker, and cake, including route salesmen) (A.F.L.)	Barbers*	Agriculture
Clothing, men's (outerwear and furnishings) (C.I.O.)	Automobiles and parts (C.I.O.)	Bus transportation, inter-city (A.F.L.-Indep.)	Brick and clay products (including pottery and china ware)	Aircraft manufacture
Clothing, women's (outerwear and underwear) (Indep.)	Book, magazine, and job printing and publishing (A.F.L.)	Glassware	Butchers (employed in retail trade)	Air transportation (including airport workers)
Coal mining (C.I.O.)	Building construction* (A.F.L.)	Hostery	Canning (vegetable, fruit, fish, etc.)	Automobile sales and service (including gasoline stations)
Furs (C.I.O.)	Cement manufacture (A.F.L.)	Metal mining, non-ferrous (C.I.O.)	Cigarettes	Building maintenance
Glass (window, plate, and other flat glass except glassware) (C.I.O.)	City passenger transportation (street railway, elevated, bus, subway) (A.F.L.-C.I.O.)	Petroleum crude products and refining (C.I.O.)	Cigars	Chemicals (paints, varnish, fertilizer, cosmetics, perfume, soap, explosives, drugs and industrial chemicals)
Musicians* (A.F.L.)	Electrical equipment (including radios) (C.I.O.)	Silk and rayon textile	Cleaning and dyeing	Clocks, watches, precision instruments
Newspaper printing and publishing (A.F.L.)	Hats and millinery (C.I.O.)	Shoebuilding and repairs (private shipyards) (A.F.L.-C.I.O.)	Coke and manufactured gas	Confectionery
Performerst (A.F.L.)	Iron and steel (C.I.O.)	Shoes	Cotton textiles and small wares	Domestic service
Railroad train and engine service (Indep.)	Longshore (A.F.L.-C.I.O.)	Trucking (city and intercity, and	Dyeing and finishing textiles (excluding hosiery)	Hospitals and similar institutions
			Fishing	Iron mining
			Flour and grain products	Laundries
			Furniture (wood, upholstered, metal)	Office, technical, and professional employees (ex-
			Hotel and restaurant*	
			Jewelry and silverware	

Machinery and parts (A.F.L.-C.I.O.)	excluding route salesmen	Leather (tanned and leather products other than shoes)	cluding retail trade, theaters, newspapers and railroads)
Maritime transport (licensed and unlicensed personnel) (C.I.O.-A.F.L.)	Upholstering and floor covering (employees in retail trade) (A.F.L.)	Light and power Lumber and lumber products†	Quarrying
Motion-picture production (except actors) (A.F.L.)		Meat packing	Retail trade (department, specialty, and grocery store, sales, delivery, and office personnel)
Railroad clerical service (A.F.L.)		Milk and dairy products (including route salesmen)	Telephone
Railroad shops and maintenance (A.F.L.)		Newspaper office employees (editorial, circulation, advertising)	Turpentine and rosin
Rayon yarn (C.I.O.)		Pulp and paper products	Wholesale trade
Rubber (tires, inner tubes, boots, shoes, and other rubber goods) (C.I.O.)		Sugar refining (cane, beet sugar)	
Stoves (A.F.L.)		Taxicab	
Tailors (merchant tailors employed in retail trade) (C.I.O.)		Telegraph	
		Theater (maintenance employees, picture-machine operators, ushers, stagehands, box-office employees)	
		Woolen and worsted textiles	

* Conditions regulated in many cases by detailed written working rules which may be accepted by each employer without being incorporated in an individual written agreement.

† Legitimate stage, vaudeville, burlesque, grand-opera, motion-picture, and radio performers. They are generally covered by individual contracts with uniform provisions as agreed in collective bargaining.

‡ Includes logging, sawmills, planing mills and products other than furniture, pulp and paper, turpentine and rosin.
Source: Florence Peterson: "Industrial Relations in 1938." *Monthly Labor Review*, XLVIII, March, 1939. No. 3, p. 508.

as inapplicable to "positions" which carry salary payment and annual vacations; and still others in this field think of their work as a steppingstone to executive positions.

Deducting a part of the office workers as, at least at present, unorganizable, there remain out of forty-eight million workers, some twenty-five millions in jobs which might be unionized. Yet even this figure is too high. It fails to take account of the many unemployed. It fails to take account of the many small factories in which individual bargaining is almost a matter of course. It fails to take account of the "sweated" workers, especially women, whose slight bargaining strength and temporary employment allow little possibility of organization. Furthermore it fails to consider the problem of the Negro, against whom even the unions have frequently discriminated.

With all these deductions, the organizable working class must total, in a favorable year, about twenty million. Even this figure is by no means a ceiling. As the idea of unionism becomes more dominant in the manual group, it penetrates previously untouched white-collar areas. In recent years the rise of unions of newspaper reporters, insurance agents, teachers, actors, and office employees has been extraordinary.

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QUESTIONS

1. What were the major shifts in occupational distribution between 1870 and 1930?
2. Account for the decline between 1870 and 1930 in the proportion of American workers engaged in agriculture.

3. Would it be correct to say that factory production is requiring an ever smaller portion of American workers? Explain.
4. What portion of gainful workers are women? Within what occupations are they grouped?
5. Is it possible to differentiate between those workers whose occupation may place them within the orbit of the trade-union movement and those who are clearly outside the movement? Where is the line drawn in your home town?
6. Within what occupational groups did trade-unionism early gain a foothold? Why? Where has unionism failed to penetrate? Why?
7. Indicate the major effects of the N.R.A. on union growth.
8. Within which fields has the C.I.O. entrenched itself? To what extent had these areas been previously organized by the A.F.L.?
9. Indicate in parallel columns the strongholds of each organization (C.I.O. and A.F.L.).

THE STRUCTURE AND FUNCTIONING OF 15 . . . AMERICAN TRADE-UNIONS

IN Book II we described the historical development of the American trade-union movement. We turn now to a discussion of the structure and functions of present-day organizations. This task is made difficult both by the spectacular union gains during the years 1933-1940 and by the heated conflicts which developed during that period between the A.F.L. and the C.I.O. Unless and until this conflict is resolved and an armistice signed between the contesting union factions any historical account of that period must perforce be but a description of armies on the march.

PURPOSES OF TRADE-UNIONS

A trade-union is an independent, voluntary organization of workers formed for the purpose of negotiating with employers through elected representatives concerning the terms of employment of its membership. In addition to this basic aim, the union may engage in various joint social, beneficial, and political activities.

Aims of representative unions are expressed in general terms in their constitutions. The Order of Railroad Telegraphers states as its objectives: "For the protection of their interests, to elevate their social, moral and intellectual condition, to promote the general welfare of its membership, to establish a protective fund, and to promote and encourage a mutual benefit department for the aid and comfort of the beneficiaries of deceased mem-

bers." The Printing Pressmen's Union seeks the following goal: "To bring about and maintain the highest quality of workmanship, to encourage and sustain good workmen, to assist members in securing employment and retaining same, to influence the apprentice system for the benefit of both employer and employee, and to establish and uphold a fair and equitable wage scale."

The size of America, the speed with which its economic institutions have changed, the numerous population groups which have not yet developed a unity of feeling, in fact, the very complexity of our industrial system have led to considerable overlapping between union organizations and to a seeming confusion of objectives. Some workers are employed in small towns in which union organization is virtually unknown, some reside in metropolitan areas and work in highly mechanized industries, others are in small-scale plants. Just as there is no average or typical American business structure, there is no average or typical union organization. In viewing the current labor situation we must be careful not to think of the labor movement as unified in its objectives. The fact is that there are many sections of a labor movement, each with its own objectives, many of which overlap and conflict with other aspects of the movement. On the other hand, one should not gather the impression that the American labor movement is aimless because its several sections seem pointed in so many directions.

Let us consider briefly some of the purposes for which unions may be formed:

Collective agreements with employers concerning wages, hours, security of employment, and working conditions. Collective agreements involve negotiations between the trade-union and an employer or an association of employers as to the terms under which the work will be conducted. These terms are usually embodied in a written contract. The union may seek higher wages, a shortening of the work-week, the removal of the employer's absolute power to hire and fire, the right to control the introduction of new machinery. Whatever its purpose, collective bargaining has proved to be the first objective of the trade-union movement. Upon this objective much of our discussion will hinge.

Social and beneficial advantages to members. Labor organization enables workers to unite both for comradeship and for the launching of insurance and other benefit plans. Through unionism workers have sought to develop among themselves a close voluntary association which is quite apart from collective bargaining purposes; in fact, some working-class groups are formed exclusively to secure social and beneficial advantages. Whatever the original purpose of organization, social advantages usually become an in-

tegral part of trade-unionism. Then, too, joint action provides a buffer for the individual member during periods of ill health or unemployment. The sense of solidarity which comes from a close-knit organization is also bulwarked by common craft or industrial interests.

Political advantage within the capitalistic system. The United States Chamber of Commerce, the tariff associations, and the American Legion are organizations which have been able to command substantial power in legislative circles on behalf of their respective memberships. In recent years workers have likewise organized to secure political advantage for themselves and in doing so have frequently employed their trade-unions as an effective pressure group. Their lobbying activities have been sufficiently developed to secure desired legislation or to defeat certain unfavorable measures. They have not thus far, however, been able to exert the full political strength which their numbers should give them.

An alternative social order. Trade-union groups have furnished the driving force which has led to the rise of the co-operative movement, and of the Socialist, Farmer-Labor, and Communist parties. Many of these movements have been led by intellectuals who are also sympathetic to labor's problems. Nevertheless, the basic support for these movements has usually come from those in the ranks of organized labor. As a consequence of divided leadership, these political groups, as we shall note, have been at variance both as to the objectives sought and as to the tactics to be employed. Any political strength they may wield is further sapped by the fact that many in labor ranks violently oppose any political doctrines that advocate the destruction of the capitalistic system.

Income for the promoters and leaders. Organizations are frequently formed not only to assist their membership but also to furnish income to their sponsors. Sometimes, once a legitimate movement has gained headway, it may be turned from its original objective in order to advance the pecuniary interests of those who have captured it. This type of growth, known loosely as racketeering, has been the origin of many a trade association of employers. It has also formed the basis for the fortunes of the "strong-arm" men who have come to dominate minor sections of the trade-union movement. In either case the newcomer may or may not be welcomed by those already in the field. Racketeers may combine to exercise a "price-stabilizing influence" upon a trade (for example, dry cleaning) since no dealer will dare to undercut the specified price. As a result the net profits to the individual dealer may be greater in spite of the payments he must make for "protection." The domination of trade-union activities by self-seeking and unscrupu-

lous leaders may similarly lead to settlements which advance wage scales at the cost of other groups so that both the racketeering leadership and their union following enjoy a temporary gain by the undertaking.

These five objectives appear in varying degrees in American trade-unions. Some unions stress the "pure and simple" trade-unionism of collective bargaining and defensive political action. Some will emphasize beneficial features. Some will urge radical political action. Even within a single union great differences may appear. A leadership may be selfish and corrupt while large sections of the membership are honest. Again, within a single union certain local groups may be radical while other groups are most conservative. Union policy usually reflects the belief of the majority, but it frequently is the expression of an entrenched minority.

No discussion of union policies is complete without a reference to the various types of union structure which have been built in order to attain these several ends.

THE DIVERSE STRUCTURES OF AMERICAN UNIONS

An examination of American unions reveals a confusing variety of horizontal unions, craft unions, amalgamated craft unions, industrial unions, semi-industrial unions, industrial coalitions, national federations, state federations, and so on. Since each of these terms refers to a particular type of union, it is important to distinguish among them:

1. A *trade-union* originally meant much the same thing as a craft union does today. At the present time the term is used in the description of labor organization in general.

2. A *craft union* is an organization of workers who possess a special skill and perform a particular type of work. Such unions were once the dominant type of labor organization. As industrial techniques changed, the number of "pure" craft unions—unions comprised of workers of special skill at only a particular job—diminished greatly in number, so that today there are only a very few left, such as the wire weavers or the siderographers.

3. As used at the present time, the term *craft unionism* really refers to *amalgamated craft unions*, which are more inclusive than the pure craft union. An organization such as the carpenters' union will include those who work on wood regardless of the work they do. The machinists' union similarly claims those who work on a great many different types of machines. The plumbers' union includes steam fitters, and the painters' union includes paper hangers, scenic artists, and bridge painters.

4. An *industrial union* includes all workers in a given industry regardless of the work they do. Thus, the United Mine Workers of America has among its members all types of workers around a mine, including machinists

and clerical workers. Not all unions which call themselves industrial unions include *all* workers in a given industry, for clerical workers and maintenance men may be excluded. To such organizations, the term *semi-industrial unions* is often applied.

5. Sometimes a union will extend, like the food workers' union, into several industries; such an organization is often called a *multiple industrial union*.

6. In the discussion of the A.F.L. we shall describe the *departments* in that organization. These departments, like the building trades department, are *industrial coalitions*—rather loose organizations of the various craft unions in the building industry.

7. A *national federation* is typified by an organization like the American Federation of Labor, which regards itself as the parent body of all unions in the United States though at no time were all unions actually affiliated with it.

8. A *company union* is composed entirely of the employees of a particular company, sometimes even of a single plant. Typically, such unions have been started and are dominated by the employer.

9. The term *local* is used to designate the smallest geographic subdivision of a national or an international union. A local may thus include all the machinists of Peoria or of Portland. Sometimes the local may be based on the worker's residence; sometimes it is based on the plant in which he is employed.

10. A *labor union* is an organization which admits to membership all workers regardless of trade or industry.

Co-operation of locals in an area is obtained when they are joined in a *district council*. For example, District Council No. 9 of the painters' union includes all painters' locals in the boroughs of Manhattan, the Bronx, and Richmond in New York City.

The *national union*, of course, is the organization which lays claim to all those of a certain craft or to all those in a certain industry within the country. Frequently this is more a paper than a real jurisdiction. If the union has locals outside the country, for example, in Canada, it will commonly call itself an *international union*, like the International Ladies' Garment Workers' Union.

This list does not by any means exhaust the total of the various types of unions; later we shall refer to various others. It should be noted, however, that, except for the purely geographical divisions, the types we have described fall into two general classes: (1) the craft unions with their variants, and (2) the industrial unions with their variants. The dispute which is now raging between the A.F.L. and the C.I.O. is essentially a dispute be-

tween these two classes, though there are, as we shall point out, numerous other factors involved.

It has become fashionable in some quarters to describe craft unions as *horizontal* unions: that is, as unions embracing workers of a special skill, like blacksmiths, cutting across industrial lines; and industrial unions as *vertical* unions: that is, unions embracing all workers in a given industry from start to finish. This description, paralleling the description of industrial combinations as horizontal (for example, a combination of two typewriter companies) or vertical (for example, an automobile company which also operates coal mines, steel mills, rubber plants, glass factories, and so on), is scarcely valid, for, to be truly vertical, an automobile union would have to include coal miners, steel workers, rubber workers, glass workers, textile workers, and so on. At the same time, a union like the carpenters', which claims jurisdiction over workers in sawmills and woodworking establishments as well as over carpenters actually engaged in building, can scarcely be properly described as an example of horizontal unionism.

The explanation for the multiplicity of union types in the United States is to be found in a variety of factors. Chief among these is the new technology which, by breaking down craft lines, has made the craft union obsolete in a growing number of industries. Important, too, is a developing sense of class consciousness which has prompted many leaders of labor to urge the abandonment of numerous small craft organizations in favor of all-embracing unions. On the other hand, the craft unions were first in the field and developed great strength and cohesion, and in places where skill is still important, the craft organization is the dominant one.

In the heat of the struggle between the A.F.L. and the C.I.O., it has sometimes been mistakenly supposed that all was peace and quiet in the family of labor until John L. Lewis came along. Actually, within the Federation, jurisdictional fights have been frequent. Craft unions have struggled with one another for membership, and craft and industrial unions kept up a running fight which in 1935 culminated in the controversy between the Committee for Industrial Organization and the officials of the American Federation of Labor. At the root of the difficulty has been the failure of the labor movement to discover a satisfactory formula either for defining the boundaries of a single craft or for determining where craft unionism and industrial unionism should meet. Something of the plight of the movement may be seen by an examination of a few of the perplexing problems that have come up for adjustment. Should the installation of metal windows and casings be the job of a carpenter or a sheet-metal worker? Should bus drivers on an interurban bus line, employed by a railway subsidiary, belong to a railroad union such as the trainmen's union, to the street railway and motor coach operators' union, or to the chauffeurs' and teamsters' union?

Should bricklayers employed in a steel mill belong to the bricklayers' union or to the steel workers' union? Should workers in a factory making auto horns belong to the electrical workers' union or to the auto workers' union?

For the first fifty years of its history, the American Federation of Labor allowed itself to become virtually a "land office" which registered the jurisdictional claims of its affiliated groups. Craft unionism predominated because this form of organization received earlier and more widespread membership support. No clear rule existed as to the type of structure to be encouraged other than an understanding that craft rights would be established where there were easily recognizable lines of demarcation. It was understood that a charter, once granted, was to be respected. Where conflicts occurred, as they frequently did, the Federation judged the merits of the dispute but was frequently unable to enforce its decisions.

So long as there were large areas in basic industry which were unoccupied either by industrial or by craft groups, there were not enough boundary disputes to precipitate a major conflict within the organization. If the carpenters wished a craft union which would include all carpenters, wherever employed, assent was given. If the machinists wished craft organization, they too received approval. If the miners or the garment workers wished industrial organization, charters were given by the Federation so long as previously recognized groups had not staked out prior claims in these fields or were not prepared to defend any claims which they might have. Thus, up to 1935, the A.F.L. was able in some measure to establish itself as a unifying agency which conferred jurisdictional rights upon a large portion of the existing labor movement. That a major crisis was not earlier precipitated was due to the impotence of the Federation as an organizing force.

THE A.F.L. STRUCTURE IN 1935

The year 1935 was the last in which the A.F.L. held intact its traditional structure, which combined industrial and craft unions. Its affiliates at that time were:

- 109 National and International Unions with a membership of 2,933,858
- 31,291 local unions (linked to the A.F.L. through their respective national or international organizations and other affiliated bodies)
- 1,354 local trade and federal labor unions with a membership of 111,489
- 49 state federations of labor
- 730 city central bodies
- 4 departments (and 522 local departmental councils)

Of the 109 autonomous unions comprising the Federation (shown in Chart 7) some 18 might be listed as being of the industrial type. These

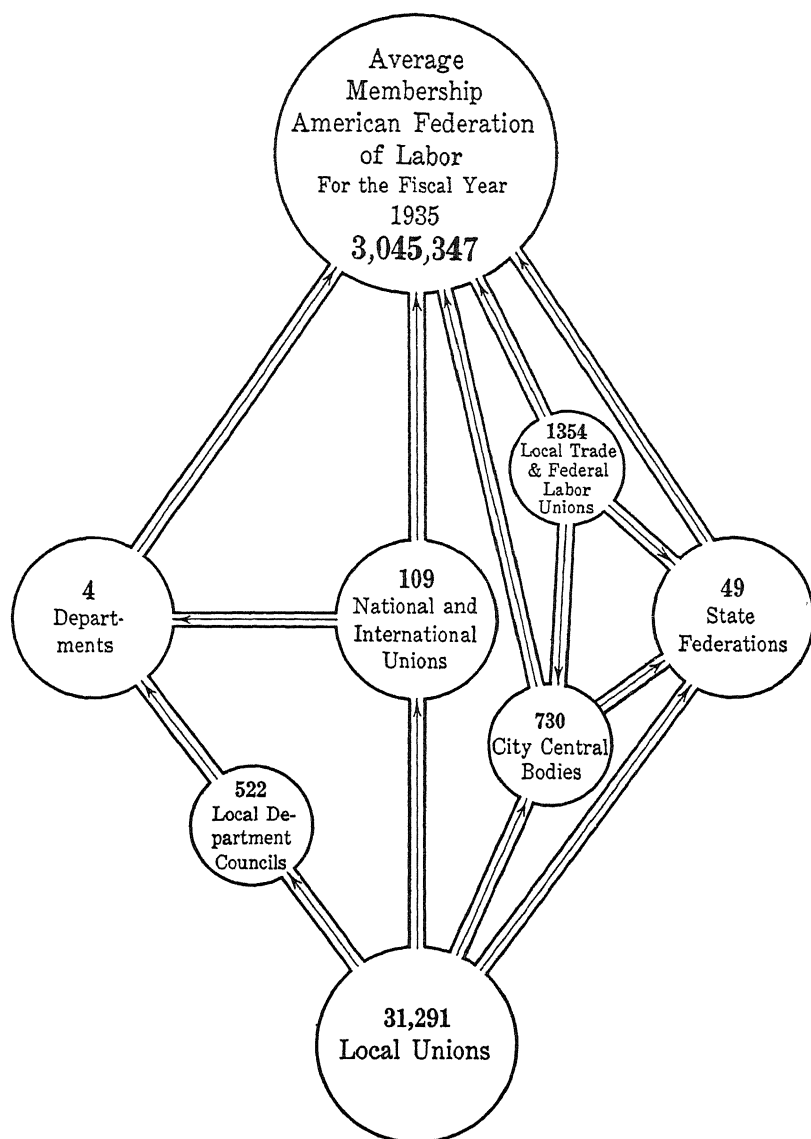


CHART 7.—Membership in the American Federation of Labor

Source: Report of Proceedings of A.F.L. Convention of 1935, p. 31.

included the Automobile Workers, the Cigar Makers, the Tobacco Workers, the Powder and High Explosive Workers, the Brick and Clay Workers, the Glass Bottle Blowers, the Flat Glass Workers, the Amalgamated Clothing Workers, the International Ladies' Garment Workers, the Brewery

Workers, the Foundry Employees, the Pulp, Sulphite, and Paper Mill Workers, the United Mine Workers, the Mine, Mill, and Smelter Workers, the Quarry Workers, the Oil Field Workers, the Fire Fighters, and the Laundry Workers. Industrial unions had also been authorized in the rubber and the cement industries.

Of the industrial unions affiliated with the A.F.L. in 1935, the Automobile Workers' Union had just been launched after several years of intense conflict with the craft unions; indeed, its industrial union status was still challenged by some of the crafts. At that time, in the craft organizations, the Cigar Makers had lost their importance because of machinery; the Tobacco Workers were small in numbers but increasing; the United Powder and High Explosive Workers was small and declining; the Brick and Clay Workers had practically disappeared; the Glass Bottle Blowers still formed a stable but small union; the Quarry Workers and the Laundry Workers were likewise small units. The Fire Fighters formed a special case of an industrial group in a public service field. Only in mining, in the garment trades, in the oil fields, and among the brewery workers were industrial unions strong.

A considerable portion of the strength of the A.F.L. in 1935 lay in a group of unions which occupied an indeterminate status between craft and industrial unionism. Strictly speaking, these were not industrial in their character, for their memberships were somewhat restricted in scope. These semi-industrial organizations included the Boot and Shoe Workers, the United Hatters, Cap and Millinery Workers, the Fur Workers, the United Garment Workers, the Iron, Steel, and Tin Workers, the Street and Electric Railway and Motor Coach Employees, the Leather Workers, and the Textile Workers.

Most of the unions affiliated with the Federation were craft or amalgamated craft in character. A few, like the Bookbinders and the Granite Cutters, were of the pure craft type and admitted only those of a single skill. More typical, however, were the "amalgamated craft" unions like the Bricklayers, Masons, and Plasterers' International Union and the International Brotherhood of Teamsters, Chauffeurs, Stablemen, and Helpers of America.

In addition to the 109 autonomous unions chartered by the Federation in 1935, there were 1,354 federal local unions: that is, organizations attached directly to the A.F.L. offices. They are of two types, the federal labor locals and the federal trade locals. Historically, the federal labor local unions had been established by the Federation in small towns where the unit of organization was so small that each craft was of insufficient size to form a local in its own field. The expectation was that, with substantial increases in membership, the federal labor locals would have their membership parceled

out among the appropriate national unions. The federal trade locals have tended typically to be craft organizations in fields in which no national union exists. They have been the nuclei upon which the Federation has expected to build new affiliated unions.

This traditional pattern of federal unions was by 1935 greatly altered because of the pressure of organizational work and the increasing jealousy of the national unions. The stimulus to union organizing brought about through Section 7(a) of the National Industrial Recovery Act necessitated the rapid granting of charters, especially among mass-production workers. The thousands of workers who clamored for organization were thus brought into the movement with a minimum of friction, but without any determination of their future status. During 1934 and 1935, 1,804 federal labor unions were organized in a wide number of industries, including autos, rubber, aluminum, radio, cement, lumber, gasoline stations, and natural gas and its by-products. In 1935 the auto workers and rubber workers were chartered as international unions. National councils were also formed for the federal unions in the coke by-products and gasoline station fields.¹

Affiliated with the 109 national and international unions were 31,291 local unions. These organizations, together with the federal locals, formed the foundation of the Federation structure. In 730 communities these local groups were banded together in *city central bodies* which sought to advance the cause of labor in their area. Specifically, it was the function of the city central body to give moral and financial support to member organizations involved in trade disputes, to iron out local differences between unions, to act as an exchange bureau through which information could be relayed, and to bring pressure toward the maintenance of fair labor standards on the part of local governments. Quite often city central groups have endorsed political candidates as "friends of labor," and have functioned as powerful political groups in the community.

The *state federations of labor* were established by the A.F.L. to represent the interests of the locals within a given state. They have served chiefly as lobbies in state legislatures, although they have also sought to further labor's cause in the economic field. These organizations have been handicapped through the fact that local union support is on a voluntary basis. They have, however, maintained offices, generally in the capital city, and have kept an alert eye on the voting record of legislators on measures of interest to labor. The annual meeting of the state federations of labor has also been a valuable medium for the discussion of labor policies. Since the state federations maintain close touch with the rank-and-file demands, their policies have often been progressive.

Long before the craft-industrial controversy resulted in open battle,

¹ *Report of the Executive Council of the A.F.L.*, 1935, pp. 73-74.

the A.F.L. had taken lagging steps toward the development of a method by which craft unions might settle their quarrels amicably and act in unison. The technique employed was to form co-ordinating departments within the A.F.L. Three were in existence in 1935: the Building Trades, the Railway Employees, and the Metal Trades departments.²

The departments were organized on the theory that jurisdictional disputes might be eliminated through joint agreement and that the local departmental councils (522 in number in 1935) might serve as the agencies through which unified negotiations could be conducted. This was held by many to be the answer of craft unionism to the advocates of the industrial union principle. Local craft groups in a given industry—for example, construction or shipbuilding—would federate into local departmental councils which would furnish the desired unity without sacrifice of craft autonomy. Nationally the crafts would settle their joint problems through the office of the paid secretary of their department.

From the beginning the department scheme proved a disappointment. It has been continued in only these three fields, and even there it has frequently proved an ineffective instrument.

In the building trades, jurisdictional rights are divided among nineteen unions. Their interunion quarrels continued despite the presence of the Department, since the Department had no effective power to enforce its decisions. Many years of fratricidal warfare were climaxed in 1935 when three of the strongest unions in the field, the Carpenters, the Electrical Workers, and the Bricklayers, engaged in a contest with other smaller building trades-unions for control of their Department.

In 1934 the executives of the A.F.L. had attempted to effect unity by insisting that these three strong organizations reaffiliate with the Building Trades Department. This affiliation with the Department was then objected to by the other organizations on the grounds that the larger crafts would dominate the Department. The matter was brought into court, but at the close of 1935 no agreement had been reached. Peace in the building trades was re-established in 1936 only because mutual animosity toward the C.I.O. brought compromise and an impartial arbitrator into the Department with power to settle interunion building-trades disputes.

Though the Metal Trades Department has dealt chiefly with unions engaged in Army and Navy contract work, it has also negotiated some joint agreements in industrial fields on behalf of its member organizations.³ A

² The Union Label Trades Department, a fourth, was formed for a different purpose—that of fostering the use of products bearing the union label.

³ One such agreement was between the Sinclair Refining Company and the Department which acted on behalf of the Blacksmiths, Boilermakers, the Federation of Technical Engineers, Electrical Workers, the Operating Engineers, the Firemen and Oilers, the Hod Carriers, the Bridge, Structural, and Ornamental Iron Workers, the Machinists, the Molders, the Pattern Makers, the Plumbers, and the Sheet Metal Workers.

somewhat unique agreement (covering thirty-one locals belonging to thirteen national and international unions) was jointly concluded between the Metal Trades and Building Trades Departments and the Anaconda Copper Company.⁴ This agreement became a bone of contention for the Mine, Mill, and Smelter Workers claimed that its jurisdictional rights had been trespassed upon.

The Railway Employees' Department has sought to federate the railroad unions affiliated with the A.F.L. It is best known through its sponsorship of plans for union-management co-operation, but its work in negotiation has been eclipsed by the formation of the Railway Labor Executives' Association, which also includes large operating crafts not in affiliation with the A.F.L.

THE A.F.L. CONVENTION AND EXECUTIVE COUNCIL

With a structure as cumbersome as that outlined above and embracing organizations so diverse in their interests, one would expect that the annual conventions of the A.F.L. would be the arena for sharp clashes of opinion. Each national union is allowed one delegate for each 4,000 paid-up members (or major fraction) and each delegate has one vote for each 100 members (or major fraction) that he represents. Since the method of selecting delegates is left to each member organization, the annual conventions have tended to be the meeting ground for the national officers of the affiliated unions. The state federation of labor, the city central bodies, and the federal locals are each allowed but a single vote.

The record of the Federation conventions before 1935 is remarkable for the absence of conflict. This is to be explained in part by such factors as the size of the gathering, the smooth functioning of the committee machinery which kept issues from coming sharply into debate, and the almost total absence of radical groups. The most important factor, however, was the heavy hand of tradition, which guided the main course of the meeting into harmless generalities and steered most of the delicate questions to the Executive Council for settlement. To be sure, jurisdictional disputes were aired each year and occasionally a division was taken, yet the annual conventions were long noteworthy for the avoidance of important issues for the sake of outward harmony.

Before the N.R.A. had infused new life into the Federation, the apathy of member organizations was such that the conventions lost whatever vitality they had once possessed. Well-fed executives foregathered annually for a social week at Denver, Toronto, San Francisco, Miami, or some other distant point and listened to oratory or drank a social glass while paying lip service to the great organization that was rounding out its first half century.

⁴ *Labor Information Bulletin*, November, 1934, p. 4.

The Executive Council, which was annually chosen by the convention, had up to 1934 consisted of a president (William Green since 1924), eight vice-presidents, a secretary (Frank Morrison since 1897), and a treasurer. In 1934 the opposition of the industrial-union group led to an increase in this official body through the addition of seven new vice-presidents. The craft unions dominated the Executive Council. John Coefield of the Plumbers, G. M. Bugniazet of the Electrical Workers, William Hutcheson of the Carpenters, and Harry C. Bates of the Bricklayers were executives of building trades-unions as well as members of the Council. Other craft representatives included Matthew Woll of the Photo Engravers, T. A. Rickert of the United Garment Workers, Arthur O. Wharton of the Machinists, Joseph N. Weber of the Musicians, Daniel J. Tobin of the Teamsters, George L. Berry of the Printing Pressmen, E. J. Gainor of the Letter Carriers, and Martin F. Ryan of the Railway Carmen. The only industrial union advocates on the Council were John L. Lewis of the United Mine Workers and David Dubinsky of the International Ladies' Garment Workers' Union.

Since each candidate for the Council is separately elected by the annual convention, the dominating position of the craft unions in that body insured a most conservative board. Members once elected to the Council tended to remain there. The convention itself had little time and less disposition to determine basic policy. This task was left to the Executive Council, whose overwhelming conservatism was a predetermining factor in any decision. In fact, a cross section of the views of this body would reveal an intense hatred of radicals, an opposition to marked changes in union techniques, and a firm faith that unionism should be given an opportunity to show the employer that it is a strong bulwark of private enterprise. Besides these was the substantial distrust, inherited from Gompers, of independent political action on the part of labor. Although careful not to make general political endorsements as a body, the members of the Executive Council were predominantly Democratic in sympathy.

The executive offices of the Federation are suitably housed in Washington, D.C. The annual budget of the Federation, raised principally through per capita taxes on member organizations and initiation fees was, in 1934-35, the year preceding the schism, in the neighborhood of a million dollars. Out of this fund executive and office salaries of some \$200,000 and organizers' salaries and expenses of \$330,000 were paid. The sum of \$150,000 was allocated for the publication of a monthly magazine, *The American Federationist*. Strike and lockout benefits totaled \$45,000, the balance being used to carry the heavy costs of correspondence, travel, and overhead.⁵ William Green was paid a salary of \$12,000 besides traveling expenses of \$7,048.

The major work of the A.F.L. falls under eight headings:

⁵ *Report of the Executive Council of the A.F.L.*, 1935, pp. 3 f.

1. Through its organizers, it assumes direct control of affiliated Federal trade and labor unions.
2. It lends support to special organizing campaigns of its affiliated national and international unions.
3. It seeks to act as national public spokesman for the labor movement. This involves speeches, press releases, and the handling of a mass of correspondence.
4. It lobbies for laws favorable to labor.
5. It seeks to secure the election of sympathetic public officials and to defeat those whom it considers hostile.
6. It attempts the settlement of interunion quarrels, especially of a jurisdictional character, and through its Building Trades, Metal Trades, and Railway Employees Departments, it seeks the further co-ordination of its membership.
7. It maintains a Workers' Education Bureau to acquaint its members with problems confronted by the labor movement.
8. It seeks, through its Union Labor Trades Department, to extend the purchase of union-made goods.

It will be noted that the Executive Council of the American Federation of Labor has no power to call strikes, save in the fringe of federal locals. In fact it has few rights over its affiliated national organizations. Its chief force is that of moral suasion. Though the Executive Council might recommend action, the power of expulsion was, in 1935, in fact contingent upon a two-thirds vote in the annual convention.

The Federation in reality possessed only an intangible but very real prestige. A molder, a barber, or a mine worker identifies himself in the first instance with his own craft or industrial union. That this union was in the A.F.L. placed the stamp of authenticity upon his organization. The power of the Federation was psychological. Membership in the Federation helped to secure the assistance of the unions in the trade or in the locality; it was the open sesame for entrance into the city central body or the state federation of labor. Furthermore, it meant a measure of jurisdictional protection. To be outside it was to be in a dual organization and thus subject to raids from those within the sacred walls. The Federation was an information center for its affiliates. And, one must not forget, the annual convention of the A.F.L. came to have all the attractions of an annual reunion for the old friends meeting in a congenial and convivial atmosphere.

Many attacks have been made at one time or another upon the A.F.L. by those who had considered its structure obsolete. During the twenties it was so impotent and its officers were so bewildered as the force of depression decimated its ranks that many writers alluded to the "twilight of the A.F.L." or spoke of its complete collapse. Few could anticipate the magic to be wrought by the New Deal and Section 7 (a), least of all the A.F.L. officials themselves, who, beaten by economic pressure and the failure of all their techniques, had become so ineffectual and conservative that their

pronouncements were often indistinguishable from those of corporate executives. Yet between 1933 and 1935 the A.F.L. changed from an attitude of lassitude and despair to one of hopefulness. The still harmony of a graveyard soon gave way to the most devastating fight in the history of the organization. Just what were the forces within the Federation which brought about the split in its traditional structure?

THE NATURE OF THE DISPUTE OVER UNION STRUCTURE

The Federation, as we have said, was familiar with jurisdictional disputes. They were a perennial problem. The Federation's family was never a happy one. Accusations of "body snatching" had been hurled for years—and with cause. Each union wished dues-paying members and prestige and judged their organizers by "results." Craft union had fought craft union. Craft and industrial groups had long tangled. The new element in the situation was the fact that for the first time in fifteen years, thanks to the New Deal, member organizations had more than enough bones to fight over. Moreover, the question was insistently raised as to whether the great influx of new "unseasoned" unionists might not destroy the control—and the jobs—of the stalwart craft unionist executives who had long dominated the Federation.

Control of the A.F.L. was important because it registered the jurisdictional titles of the member organizations. If this citadel should be captured by those wishing a drastic redistribution of union boundaries, much would be lost by existing craft organizations.

In order to clarify the position of both sides in the conflict let us briefly summarize the case for craft and that for industrial unionism.

First, the position of the craft group:

Craft unionism is stable, reliable, persisting. Members of craft unions have an identity of interest based upon skill and training. Their standards of living are comparable. They will work together in an organization. They pay dues. Bargaining with an employer through the craft form is more effective, for the union agents speak for compact groups of known qualifications. The union can offer the employer skilled workmen who have served an apprenticeship. These workers do not suffer loss of bargaining power by being submerged in a heterogeneous group.

The craft union facilitates the transfer of workers from a craft in one industry to a similar craft in another. Thus a stationary engineer or a carpenter will carry the same card whether he works in a railway shop, in the building trades, or in a manufacturing company. The craft unions have survived under the most adverse economic conditions. Well-functioning organizations have been built up, substantial benefit funds have been accumulated. Craft jurisdictional rights have been well established and should not be impaired.

If unskilled or mass-production workers wish to form unions, the craft groups

offer no objection as long as the jurisdictional claims of the craft groups are respected. Most of the benefits of joint action attributed to industrial unions can be better obtained by the federation of crafts rather than by pooling all workers in one polyglot union.

On the side of the industrial union the following case may be stated:

The industrial unions are adapted to the conditions of modern production. Most workers are today either semiskilled or unskilled. They have no craft spirit. The industrial union guarantees an absence of jurisdictional disputes and a certainty of joint action in time of strike. Workers cannot be pitted against one another. An industrial union is more economical to administer. It avoids duplication of officers, conventions, and organizing expenses. Wage negotiations can more successfully be carried on because both sides have a single set of representatives.

The industrial union is thus better equipped to serve the interest of all employees by unified bargaining. Since many industries have substantial trade associations in which competing employers are joined, the logical counterpart is a union with adequate resources which can treat industry-wide problems.

Craft unionism has failed to build a substantial labor movement despite years of organizing on that basis. It is time to try a new plan.

Perhaps the question of craft versus industrial unionism may best be presented by considering the practical problem of how the various occupations in an automobile factory would be organized under the two plans. In Chart 8 are listed the actual occupations in a typical automobile plant and most of the unions which would under the craft policy have jurisdictional claims in the industry. At the left are thirteen craft unions, together with a "production workers" group.⁶ The latter would lay claim to all workers not possessed of a distinguishable skill which would make them eligible for specific crafts.

The connecting lines, drawn by a group of automobile workers, suggest the overlapping of jurisdictional claims both between competing crafts and between specific crafts and the "production workers." Most of the tasks in the industry bear a hazy relationship to a skilled craft and yet with the modern assembly-line technique require but a short period of training. It is also not uncommon for automobile workers to be engaged in a single day on a number of jobs which on this chart are classified as being within the jurisdictional province of competing crafts.

Under an industrial union structure, all of the manual workers employed in and about the plant, irrespective of craft, would be in the same organization. The principal basis for overlapping jurisdictional claims would then be with the clerical workers who, when they unionize, generally prefer a separate organization.

⁶ The production workers were organized by the A.F.L. into federal locals. These federal locals came into sharp conflict with A.F.L. craft organizations because of the desire of the former to include all workers in and about the automobile plants.

UNION CLAIMING JURISDICTION

OCCUPATION

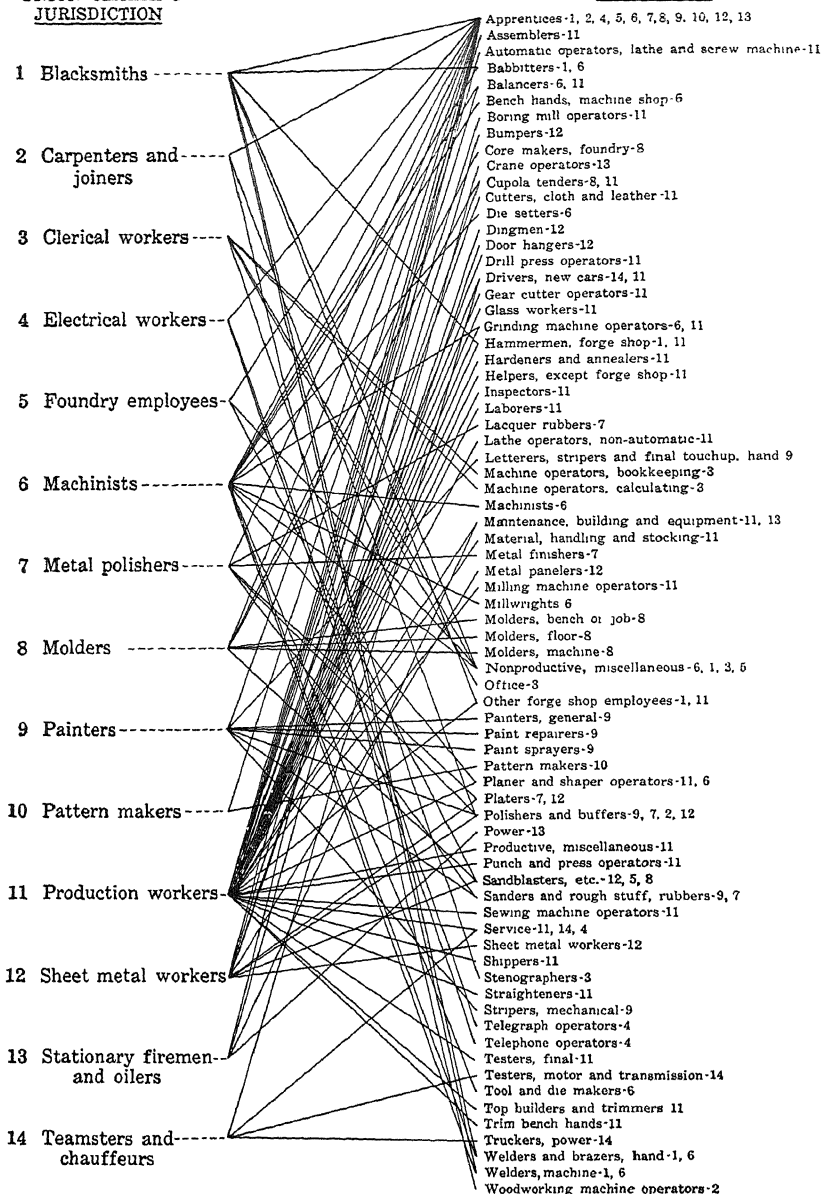


CHART 8.—An Illustration of Some of the Jurisdictional Problems Which Might Be Encountered in Recognizing Craft Jurisdictional Claims in an Automobile Plant. (It will be noted that the crafts leave room for a semi-industrial union of production workers.)

Source: Listing of occupations based on Appendix C, *Preliminary Report on Study of Regularization of Employment and Improvement of Labor Conditions in the Automobile Industry*, National Recovery Administration, January 23, 1935, p. 20a.

As already indicated, more than principle is involved in the craft union-industrial union controversy. Many of the older craft union leaders have a deep-seated contempt and distrust of the unskilled workers who are the core of industrial unions. Moreover, if the thousands of workers who are eligible for membership in craft unions join industrial unions, there is a loss of potential membership and revenue, a disagreeable prospect for those who feel that their jurisdiction has been invaded. Third, there is the very real matter of prestige. For decades, the A.F.L. has been entirely dominated by the crafts; the admission of the millions of unskilled to membership in industrial unions would give them a preponderant voice in the affairs of the Federation and would relegate the crafts to a distinctly subordinate position. There is, in addition, the understandable aversion of those in power toward any change in the *status quo*; the dominant figures in the A.F.L. grew up in a craft union tradition and have thrived (at least personally) under it, and they are fearful of change. Mention might be made, finally, of the feeling of many craft union leaders that industrial unionism is radical in its philosophy and looks toward the overthrow of the existing economic system. With this they are entirely out of sympathy and have evidenced their attitude by being quite as vigorous "Red baiters" as the most "100 per cent Americans." In short, in the controversy there are at play many personal and psychological factors which enormously complicate the already difficult problem of resolving the issue of craft versus industrial organization.

As usual in such disputes, both groups in the Federation long sought to make clear that they respected the place of the other. The craft unionists pointed to the successful industrial unions such as the United Mine Workers, which was long identified with the A.F.L. and urged that there was ample room for industrial unionism in those mass-production occupations in which craft skill is not essential. Returning the compliment, industrial unionists stated that they had no desire to upset the established craft relationships in the building trades or in other fields in which craft unionism had actually organized the predominant majority of the workers. Their desire was merely to organize the mass-production industries by the employment of the industrial union form, and to carry out that objective unhampered by craft opposition.

THE FAILURE OF THE A.F.L. TO CAPITALIZE ON SECTION 7(a)

The experience under the National Industrial Recovery Act made abundantly clear labor's inability to take full advantage of its organizing opportunities. The N.R.A. was geared to an industrial basis. Had unions been similarly organized they might have received more representation on Code Authorities and have succeeded in negotiating additional joint contracts

covering their respective fields. As it was, both the A.F.L. leaders and the government were embarrassed and bewildered. The psychological effect of 7(a) was such that workers flocked to union ranks by the tens of thousands, confident that Roosevelt and the Federation would increase their wages and give them greater economic security. The Federation formed federal unions, encouraged its affiliated nationals, and prayed for the best. The results were most disheartening. Automobile workers, aluminum workers, rubber workers and steel workers, to mention only a few, swarmed into newly formed federal locals. By October, 1934, 100,000 were in 164 federal locals in the automobile industry alone.⁷ The administration of these organizing campaigns and their disastrous conclusion aroused widespread animosity.

The confused and halting attitude of the Federation in its new organizational drives was especially criticized by the industrial unions of the A.F.L. which, again on their feet, were looking forward to harmonious relations with new allies in basic industry. This was especially the case with the United Mine Workers of America, led by John L. Lewis. Between 1924 and 1929, the miners had suffered the worst setback in their history but by 1935 their old-time strength had returned. With the slogan: "The President wants you to join," the miners had in the two preceding years organized territory which five years before a union man would not have dared to enter.

It was no accident that Lewis's organization should lead in the fight for industrial unionism. Coal, steel, and other basic industries are in close proximity and are often interlocked through management and control. Long before Lewis led the organization, the coal miners had been urging an extension of industrial unionism upon the Federation. But in the prewar period and immediately following the First World War many had come to associate industrial unionism with radicalism. The I.W.W. had advocated it. Socialists had clamored for it. It was termed "un-American."

John L. Lewis did much to remove this stigma. He had supported Herbert Hoover in 1928 and had ingratiated himself with the reactionaries in the labor movement by removing the radicals in his union. Consequently, when Lewis criticized the A.F.L. organizing policy in 1934 it was the radicals, and not the conservatives, who were skeptical.

Other industrial unions had also risen to power under the Roosevelt Administration. The brewery workers in 1935 had 41,000 members, the International Ladies' Garment Workers' Union, which had but 14,000 in 1932, reached a membership of 160,000 in 1935; the Amalgamated Clothing Workers had 100,000 members; the Oil Field, Gas Well, and Refinery Workers, which had but 400 members in 1932, touched 43,000 in 1935; the

⁷ Theresa Wolfson and Abraham Weiss, *Industrial Unionism in the American Labor Movement*. League for Industrial Democracy. New York. 1937. P. 25.

United Textile Workers ascended from 27,000 to 97,000; the Mine, Mill, and Smelter Workers had by 1935 enrolled 14,000.

These gains on the part of industrial organizations were in great contrast to the growth in craft unionism. John L. Lewis estimates that the United Mine Workers, the International Ladies' Garment Workers, the Amalgamated Clothing Workers, and the Fur Workers increased in membership between 1933 and 1935 by 132 per cent, while craft unions advanced but 13 per cent. The new unions of a quasi-industrial type in the "service" fields increased 94 per cent.⁸

Something of the problem faced by the motor workers was put graphically by Edward Stubbee of the Automobile Workers at the 1934 convention of the A.F.L. when he said: "Cleveland is slipping back due to the fact that the craft unions are trying to break us up. Our local is 100 per cent organized. . . . We know that there are very few machinists in these shops, because the boys are all known as machine hands and the painters, well, about anybody could do this painting, putting some grey paint on a chassis. The painters insisted that they should come under the painters' union. . . . We would like to have a convention called as early as possible in order to keep the various labor unions together."⁹

To be sure, the building trades, the center of craft organization, were already well organized and were not greatly stimulated by the N.R.A. Furthermore, many craft unions, such as the bakers, the railway clerks, the Longshoremen, the Boilermakers, the Bridge, Structural, and Ornamental Iron Workers, and the Switchmen did greatly improve their position. The real test of the failure of craft unionism was the slight gain made by such unions as the Machinists and the Molders, whose jurisdictional rights clashed sharply with industrial organizations. The Machinists lifted their membership from 70,000 to 92,000 and the Molders from 6,000 to 12,000. These figures, however, were but a fraction of their earlier strength.

THE SAN FRANCISCO DECLARATION OF 1934 AND ITS AFTERMATH

When the American Federation of Labor convened at San Francisco in October, 1934, elation over the current gains stifled any desire to reconstruct the Federation's structure. All delegates agreed that the Federation should launch a vigorous organizing campaign in the steel industry. The convention, by unanimous vote, empowered the Council to charter national or international unions in the automobile, cement, and aluminum industries, and such other fields as it saw fit. The Federation's Committee on Resolutions pointed to the need for "a clear and definite policy . . . that will ade-

⁸ *Annals of the American Academy of Political Science*, March, 1936, p. 180.

⁹ *Report of the Proceedings of the A.F.L. Convention, 1934*, p. 595.

quately meet the new and growing conditions with which our American labor movement is confronted. During recent years there have developed new methods. This has brought about a change in the nature of the work performed by millions of workers in the industries in which it has been most difficult or impossible to organize craft unions. The systems of mass production are comparatively new and are under the control of great corporations and aggregations of capital which have resisted all efforts at organization."

This statement of the problem was followed by an ambiguous declaration of policy by the committee which was later to become a bone of contention.

The American Federation of Labor is desirous of meeting this demand. We consider it our duty to formulate policies which will fully protect the jurisdictional rights of all trade-unions organized upon craft lines and afford every opportunity for development and accession of those workers engaged upon work over which these organizations exercise jurisdiction. Experience has shown that craft organization is most effective in protecting the welfare and advancing the interests of workers where the nature of the industry is such that the lines of demarcation between crafts are distinguishable. However, it is also realized that in many of the industries in which thousands of workers are employed a new condition exists requiring organization upon a different basis to be most effective. To meet this new condition the Executive Council is directed to issue charters for National or International Unions in the automotive, cement, aluminum and such other mass-production and miscellaneous industries as in the judgment of the Executive Council may be necessary to meet the situation.¹⁰

The resolution authorized the Executive Board to direct, for a provisional period, the policies of the newly formed unions in order to protect the rights of existing organizations.

The superficial harmony prevailing at the 1934 convention was speedily disrupted, for the ensuing year brought a revival of union unrest and sharpened the clash between the industrial and craft forces. The conflicts were centered in the motor, rubber, oil, electrical, steel, and smelting industries. The principal point at issue was whether the San Francisco Declaration was intended to bring all workers in a mass-production industry into a single unit or whether the newly created unions were to exclude craft groups.

The motor industry had long been antiunion. During the War, the Federation had chartered the United Automobile, Aircraft, and Vehicle Workers' Union, but had expelled that union in 1921 after it had engaged in a jurisdictional dispute with the crafts. The union never recovered. In 1926 the Federation renewed its attempt to organize motors, this time through the co-operation of some seventeen crafts with rights in the field.

¹⁰ *Report of the Proceedings of the A.F.L. Convention, 1934*, pp. 586 f.

According to the plan the craft unions were to suspend temporarily their jurisdictional claims, but that, once organized, the workers would be appropriately divided. Halfhearted craft co-operation and poor generalship by William Green contributed to a complete failure of this effort.

The next move on Detroit was made by independent unions, especially by the Mechanics' Educational Society, which recruited some 25,000 members soon after the signing of the N.R.A. As its answer the Federation began to develop federal locals, although it did not make it clear whether or not these were to blossom into an industrial union. In the spring of 1934 these locals gained surprising strength and threatened a general strike in the industry. The compromising tactics of the Federation in accepting mediation without a show of strength and the bitter opposition of the companies, coupled with the procompany bias of the Automobile Labor Board set up by President Roosevelt, sapped the strength of the new organizations. It was not until the fall of 1935 that the Executive Council voted a charter to the United Automobile Workers to replace the loosely knit federal unions in the industry. This tardy action was in itself ground for complaint; what was worse, the union was denied jurisdiction over tool and die makers and those manufacturing parts in contract shops.¹¹ Moreover, the Federation appointed the officials of the new union in order to insure its responsibility. These actions created much resentment on the part of the union.

The automobile workers appeared before the 1935 convention to urge a clear definition of their status and to complain that the federal unions "were being confounded, confused and all but torn apart because some old-line union would like to kill the fatted calf."¹² They condemned William Green for appointing F. J. Dillon to the presidency of the Automobile Workers' union, claiming that his inefficiency and that of his staff had lost the confidence of the membership.

The bungled handling of the new unions in the rubber industry brought a similar revolt. The independent unionism developed in rubber at the time of the N.R.A. was followed by A.F.L. chartering. The A.F.L., however, decided to split the industry among seventeen jurisdictions, leaving to the rubber workers' organization only those who built tires or fabricated rubber products.¹³ Membership fell away. By late 1934, the progressives captured the United Rubber Workers' Council which the Federation had set up for its seventy-five federal locals in the field. This council secured an international charter in September, 1935, which, however, denied the union jurisdiction over those engaged in constructing buildings, manufacturing or installing machines, in maintenance work, or in work outside the factories.¹⁴

¹¹ Wolfson and Weiss, *op. cit.*, p. 26.

¹² *Report of the Proceedings of the A.F.L. Convention, 1935*, pp. 283-84.

¹³ Wolfson and Weiss, *op. cit.*, p. 26.

¹⁴ *Ibid.*, p. 27.

The rubber workers came to Atlantic City in 1935 incensed with the treatment they had received.

The situation in steel reached the same conclusion in a rather different way. In that industry the Amalgamated Association of Iron, Steel, and Tin Workers and its aged President, Michael Tighe, had slumbered peacefully for more than a decade. It was not, strictly speaking, an industrial union, for it shared jurisdictional rights with some twenty organizations in the maintenance work, and in the blast-furnace and iron-ore mining divisions it had the competition of the Mine, Mill, and Smelter Workers' union.¹⁵

The Amalgamated had for years lived by the sufferance of the steel companies. At the time the N.R.A. was inaugurated it had 4,800 members in the entire industry. Its crushing defeat in 1919 made it apathetic to the seemingly hopeless task of struggling against corporations notoriously hostile to organized labor. In this instance the A.F.L. was far more progressive than the union officials and organizers, who were not infrequently "superannuated union members who lived mainly in the past."¹⁶ As a result, "inadequate and incompetent organization and follow-up work . . . was one of the main reasons for the failure of the Amalgamated Association to enlist more than 15 per cent of the iron and steel workers during the Code period and to hold those who did sign pledge cards and take part in union affairs."¹⁷

The A.F.L. shared in the responsibility for this setback since it was clear that the Federation would not give full assistance if the Amalgamated encroached upon craft groups. In part the blame is also to be assessed against the government for its half-hearted tactics. In the Spring of 1934, plans were laid for a general strike in the industry to institute collective bargaining relationships. President Roosevelt and General Hugh Johnson scuttled these plans and created a Steel Labor Relations Board which was so ineffective that it succeeded only in dampening union ardor. Subsequently the A.F.L. executives failed to take seriously the 1934 San Francisco convention resolution which had directed them to organize the industry. By 1935 the union's membership had shrunk to 9,700.

Not only were the union officials inept in extending membership; they were mainly concerned with preventing new progressive forces from controlling their organization. The open battles which developed within the ranks of the Amalgamated led to expulsion and to court action. A "rank-and-file opposition" leadership was set up in the winter of 1934-35. The expelled groups were reinstated by court order, and the face-saving com-

¹⁵ C. R. Daugherty, M. G. De Chazeau, and S. S. Stratton, *The Economics of the Iron and Steel Industry*. McGraw-Hill Book Company. New York. 1937. Vol. II. Pp. 972-73.

¹⁶ *Ibid.*, p. 953.

¹⁷ *Ibid.*, p. 959.

promise effected in the fall of 1935 laid a basis for future organizing work.¹⁸

The increasing tenseness of the craft-industrial struggle could be observed in many other fields. One notable instance was that of the International Mine, Mill, and Smelter Workers' union, which had conducted a strike against the Anaconda Copper Company only to discover that the Metal Trades Department of the Federation had signed a joint agreement for the crafts affiliated with it, despite the charter rights of the former allowing jurisdiction over all workers "working in and around the mill."¹⁹

The Mine, Mill, and Smelter Workers consequently came to the 1935 convention in high indignation. "The officials of the A.F.L.," their resolution read, "have viciously and traitorously refused to permit the formation of an Industrial Union and have consistently plotted to keep the workers divided and consequently helpless in their fight against miserable working conditions and peon wages." The union pointed to measures aiming at "the complete dismemberment" of the brewery workers and the Mine, Mill, and Smelter Workers. Holding that the promises in the San Francisco agreement of 1934 had not been fulfilled, the union asked for a complete reorganization of A.F.L. unions on an industrial basis.²⁰

Another dispute developed between the Metal and Building Trades Departments of the A.F.L. and the Oil Field, Gas Well, and Refinery Workers. The successful organizational campaign of the latter union brought protests from all sides. Craft unions came to the 1935 A.F.L. convention prepared to strip the Oil Field Workers of members eligible to join the crafts.²¹

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- STEIN, EMANUEL, CARL RAUSHENBUSH, and LOIS MACDONALD, *Labor and the New Deal*. F. S. Crofts & Co. New York. 1934.

¹⁸ A careful study of the union concludes that the Association's constitution was outmoded; that the leadership was undemocratic; that the international office employed poor organizing tactics and was "handicapped by the craft outlook and by a defeatist attitude of long standing." *Ibid.*, p. 970.

¹⁹ Wolfson and Weiss, *op. cit.*, p. 30.

²⁰ *Report of the Proceedings of the A.F.L. Convention, 1935*, p. 196.

²¹ *Ibid.*, pp. 190, 282.

WARE, NORMAN, *Labor in Modern Industrial Society*. D. C. Heath & Company. Boston. 1935. Chaps. XVIII, XXII.

QUESTIONS

1. What are the distinguishing features of any movement? The holding of elections? Possession of a constitution? A treasury? Insignia? Meetings? Common beliefs? The carrying on of political lobbying? Other items? Check the accuracy of this list by recalling any movements with which you may be acquainted: the prohibition movement, conservation of natural resources movement, old-age pension movement, the antivivisection movement, the tariff movement, socialized medicine movement.
2. Distinguish the leading types of labor organization.
3. How was it possible for the American Federation of Labor to avoid being wrecked by jurisdictional disputes? Explain.
4. Trace the services that might be rendered by the A.F.L. and each of its affiliated agencies to a member of a bricklayers' local union in Buffalo, N. Y.
5. What is a federal local union? How important is this type of union in the A.F.L. structure?
6. To what extent was the A.F.L., prior to 1935, under the control of the larger craft unions? Was the convention a democratic medium through which any aggrieved group might achieve justice?
7. What was the San Francisco Declaration of 1934? Account for its failure as a working compromise between the two contesting groups.
8. Trace the course of a union organizing campaign in one basic industry. (Some of the books listed above should be used as supplementary reading on this topic.)

16

A.F.L.
VS.
C.I.O.

THE ATLANTIC CITY CONVENTION OF 1935

THE report of the Executive Council to the 1935 convention of the A.F.L. carried little indication of the struggle which was to be precipitated. After noting the substantial gains in membership in the organization, the Executive Council asked for unity and co-operation to "make the coming years an epoch of union organization and union progress."¹

The A.F.L. membership of 3,045,000 was greater than that for any year since 1922. Although the Council reported new international unions in the automobile and rubber industries, it stated that conditions were not auspicious for establishing internationals in aluminum, gas, coke, and by-products, and radio.² Steel organizing efforts had not been undertaken because of internal strife in the Amalgamated Association of Iron, Steel, and Tin Workers.

The industrial unionism discussion was precipitated by the report of the resolutions committee. John Frey, reporting for the majority of the committee, interpreted the 1934 declaration as having reaffirmed "the rights and the jurisdiction given to the National and International Unions."³ Thus the majority held that it was the intent of the declaration that only actual

¹ *Report of the Proceedings of the A.F.L. Convention, 1935*, p. 24.

² *Ibid.*, p. 96.

³ *Ibid.*, p. 522.

mass-production workers should join industrial unions. Frey alluded to the contractual relationship existing between the Federation and its affiliates as one which "cannot be set aside or altered by one party without the consent and approval of the other."⁴

The minority, represented by President Charles P. Howard of the International Typographical Union, declared that the change in the character of American industry had brought into existence millions of jobs of a type unknown at the time the Federation's craft charters were issued. "The fact that after fifty-five years of activity and effort we have enrolled under the banner of the American Federation of Labor approximately three and one-half millions of members of the thirty-nine millions of organizable workers is a condition that speaks for itself."⁵ He added that the nature of large-scale mechanical industries was often such that the majority of the workers might be claimed by more than one craft union or by no craft union and that organization had been prevented and economic power destroyed by the fear that the workers would be divided by the craft groups. The minority recommendation, which applied only to mass-production industries, was for "unrestricted charters which guarantee the right to accept into membership all workers employed in the industry or establishment without fear of being compelled to destroy unity of action through recognition of jurisdictional claims made by National or International Unions."⁶ It was made clear that there was no intention of depriving existing craft unions of their present or potential membership "in establishments where the dominant factor is skilled craftsmen."⁷

In pressing the case for industrial unionism, Mr. Howard pleaded that the Federation adapt its structure to the desires of those who wish to organize instead of forcing them into unworkable arrangements which would subject some workers to the jurisdiction of several crafts during the course of a day. John L. Lewis⁸ supported him vigorously, launching his attack with the sarcastic reminder that the 1,650 organizers of the A.F.L. had in the year 1934-35 lost 314 more federal unions than they had added. "This convention floor is teeming with delegates from those industries where those local unions have been established and where they are now dying like the grass withering before the Autumn sun, who are ready to tell this convention of the need for that change in policy."⁹ Great concentrations of capital were, he held, pitted against an obsolete policy. "Methinks," he said, "that upon this decision of this convention may rest the future of the American

⁴ *Ibid.*

⁵ *Ibid.*, p. 523.

⁶ *Ibid.*, p. 524.

⁷ *Ibid.*

⁸ *Ibid.*, pp. 534-42.

⁹ *Ibid.*, p. 535.

Federation of Labor.”¹⁰ The choice was whether to continue with a “paltry three or four or five million” or whether to build a comprehensive labor movement. He charged a breach of faith on the part of the Executive Council in interpreting the San Francisco declaration. “At San Francisco they seduced me with fair words,” he affirmed. “I was beguiled into believing that an enlarged Executive Council would honestly interpret and administer this policy. I know better now. I am convinced that the Executive Council is not going to issue any charters for industrial unions in any industry.”

Turning to steel, he said: “The officers of the American Federation of Labor might as well sit down in their easy chairs and twiddle their thumbs and take a nap” as to believe that effective results will come from organizing steel workers “in fifty-seven varieties of organizations.”¹¹

Lewis made it abundantly clear that he desired to put the Federation on record as to its stand. He warned that, if the minority recommendation were not accepted, “high wassail will prevail at the banquet tables of the mighty throughout the country.”¹²

The craft forces were marshaled by Matthew Woll, John P. Frey, and Arthur Wharton. In rebuttal Woll argued that the problem had been satisfactorily solved a year before and that discretion in the granting of charter rights should not be taken away from the Executive Council. Since the various types of organization had apparently worked successfully together in the A.F.L. for fifty-five years, whether the industrial type could show a better record than the purely craft groups was open to doubt. The proposal of the minority would “throw the trade union movement or even the industrial movement into such confusion that no one would be able to straighten out the struggle.”¹³

THE FORMATION OF THE C.I.O.

The industrial unionists were defeated by a vote of 10,933 to 18,024.¹⁴ They were also outvoted on the question of allowing the Mine, Mill, and

¹⁰ *Ibid.*, p. 536.

¹¹ *Ibid.*, p. 539.

¹² *Ibid.*, p. 542.

¹³ *Ibid.*, p. 554. For example, would the union in the radio industry include radio cabinet plants? What union would control an electric refrigerator company which also manufactured radios? Should a steel plant owned by a motor company be in the steel or the motor union? What of coal mines owned by a steel company?

¹⁴ On the industrial union side were rallied the Bakery and Confectionery Workers; the Brewery Workers; the Air Line Pilots; the Amalgamated Clothing Workers; the Elevator Constructors; the Fur Workers; the International Ladies' Garment Workers; the Flat Glass Workers; the Glove Workers; the Hatters, Cap and Millinery Workers; the Jewelry Workers; the Mine, Mill and Smelter Workers; the United Mine Workers; the Oil Field, Gas Well, and Refinery Workers; the Paper Makers; the Printing Pressmen; the Pulp, Sulphite, and Paper Mill Workers; the Quarry Workers; the Teachers; the Commercial Telegraphers; the Textile Workers and a majority of the Meat Cutters and Butcher Workmen, and Typographical Union delegates. Fourteen state federation delegates were for the industrial union position and nine against. Nine state federation delegates did not vote. *Ibid.*, pp. 574-75.

Smelter Workers, the Rubber Workers, and the Automobile Workers full industrial jurisdiction.¹⁵

Although the convention closed on a note of harmony with John L. Lewis nominating William Green for re-election to the presidency of the Federation, each side quietly mustered its forces for continued battle. The industrial group met on November 9, 1935, to establish the Committee for Industrial Organization, an informal association led by the presidents of eight powerful unions: John L. Lewis of the United Mine Workers, Charles P. Howard of the International Typographical Union, Sidney Hillman of the Amalgamated Clothing Workers, David Dubinsky of the International Ladies' Garment Workers, Thomas F. McMahon of the United Textile Workers, Harvey C. Fremming of the Oil Field, Gas Well, and Refinery Workers, Max Zaritsky of the Hatters, Cap and Millinery Workers, and Thomas H. Brown of the Mine, Mill, and Smelter Workers. Howard and Zaritsky joined as individuals and not as officials of their respective unions.

The first circulars of the C.I.O. were mild and co-operative in tone,¹⁶ the Committee describing itself as having been "formed for the purpose of encouraging and promoting the organization of the unorganized workers in mass production and other industries upon an industrial basis; . . . to bring them under the banner and in affiliation with the American Federation of Labor as industrial organizations."¹⁷

John Brophy, a former progressive opponent of Lewis in the United Mine Workers, was appointed director. Headquarters were established in Washington to give to unorganized groups the organizational and financial assistance of the million workers allied with the C.I.O.

After President William Green announced that the Federations powers had been usurped Lewis countered by resigning his office as a vice-president of the A.F.L. The C.I.O. pointed to the existence of earlier auxiliary bodies and announced that it had no intention of creating a dual relationship. The Executive Council of the A.F.L. in January, 1936, voting 11 to 6 to ask the C.I.O. to dissolve, appointed a committee to confer with the C.I.O. officially. This meeting also refused an industrial charter to the radio workers and at the same time encouraged further craft encroachments in the motor industry.¹⁸

By this time the controversy had neared a crisis. At its convention the United Mine Workers repudiated Green's stand. In February, 1936, federal locals of radio workers, having refused the "class B membership" in

¹⁵ *Ibid.*, pp. 664-65, 729, 750.

¹⁶ Committee for Industrial Organization, *Industrial Unionism, The Vital Problem of Organized Labor*. Washington, D. C. 1935.

¹⁷ *Ibid.*, p. 5.

¹⁸ J. Raymond Walsh, *The C.I.O., Industrial Unionism in Action*. W. W. Norton & Company. New York. 1937. P. 39.

the International Brotherhood of Electrical Workers which would have subordinated them to a craft organization, turned toward industrial unionism.

On February 22, 1936, the C.I.O. suggested that the C.I.O. and the A.F.L. co-operate to raise one and a half million dollars to organize steel on an industrial union basis in a campaign directed by an energetic person who would co-operate with an advisory committee of interested unions. Green held off until May, when the A.F.L. Executive Council countered with an alternative plan for a campaign in steel which would respect the jurisdictional rights of craft unions and would be directed by the A.F.L. In the meantime the C.I.O. went forward with the raising of actual funds, the International Ladies' Garment Workers' union pledging the first \$100,000.

A plan was evolved by the C.I.O. under which that organization would put up a half million dollars and, in return, would receive from the Amalgamated Association of Iron, Steel, and Tin Workers the assurance that the campaign would be on an industrial basis and in charge of a co-operating committee (later called the Steel Workers Organizing Committee or S.W.O.C.). Michael Tighe, doddering president of the Amalgamated, finally agreed to this under pressure from the progressive elements within his union, which had voted 53 to 31 in favor of industrial unionism in the union's convention on May 13, 1936. In early June of 1936 the S.W.O.C. opened headquarters in Pittsburgh in charge of Philip Murray, a vice-president of the United Mine Workers.

In the meantime the C.I.O. had ignored an ultimatum of the Executive Council of the American Federation of Labor that it dissolve by June 3, 1936. It also disregarded the formal notice to appear before the Executive Council of the Federation on August 3, 1936, to answer charges of "fostering, financing and maintaining a dual, rival organization within the American Federation of Labor." The Federation held that a minority group should accept "democratic procedure and majority rule."¹⁹ In refusing to appear at the hearing the C.I.O. maintained that the Executive Council was acting without authority, since the annual convention of the A.F.L. was the only agency empowered by the Federation's constitution (Article IX, Section 12) to expel members; that suspension was tantamount to expulsion, since a majority group might thus remain permanently in power by depriving a minority of its voting privileges; and finally, that it was within its rights in seeking to increase its membership from a minority to a majority group.

By early August the C.I.O. had in its ranks twelve groups, including the steel, the flat glass, auto, the electrical and radio, and the rubber workers.

When the issue was put to a vote the anti-C.I.O. faction in the Federa-

¹⁹ Statement of William Green, quoted in Leo Wolman, *Ebb and Flow in Trade Unionism*. National Bureau of Economic Research. New York. 1936. Pp. x, xi.

tion triumphed 13 to 1 in the Executive Council, and the suspension of ten C.I.O. unions was ordered, to be effective on September 5, 1936. The membership of the unions affected by the order is given in Table 33.

TABLE 33
COMPARISON OF C.I.O. AND A.F.L. MEMBERSHIP IN 1936

	Average for 1936
A.F.L. membership	3,422,398
C.I.O. membership (March 1)	1,156,862
The ten suspended unions	
United Mine Workers	600,000
Amalgamated Clothing Workers	125,000
International Ladies' Garment Workers	210,000
United Textile Workers	79,200
Oil Field, Gas Well, and Refinery Workers	53,000
Mine, Mill, and Smelter Workers	34,062
Federation of Flat Glass Workers	12,000
United Automobile Workers	35,000
United Rubber Workers	no data
Amalgamated Association of Iron, Steel, and Tin Workers	8,600
TOTAL	1,156,862
Unions with C.I.O. connections but not suspended	
International Typographical Union	77,150
United Hatters, Cap and Millinery Workers	25,000
TOTAL	102,150
Status uncertain	
United Electrical and Radio Workers	30,000

Source: U. S. Bureau of Labor Statistics, *Handbook of American Trade-Unions*, Bulletin No. 618; and Leo Wolman, *Ebb and Flow in Trade Unionism*, p. xii.

Despite the many offers of mediation, the suspensions were carried out. On November 16, 1936, when the A.F.L. convened at Tampa, Florida, the Executive Council was upheld.²⁰ The C.I.O. was quick to point out that, had the industrial union forces been represented at the convention, the executive body could not have mustered the two-thirds majority required for disciplinary action.

UNION CIVIL WAR

Since 1936 the struggle has continued, marked by increasing bitterness and intense partisanship. Pressure from the membership of both groups and from governmental sources brought many hours of fruitless negotiations during 1937, 1938, and 1939. The principal C.I.O. unions involved in the controversy withdrew or were expelled from the A.F.L. in 1937. The C.I.O. in 1938 held a constitutional convention to establish itself as a permanent organization, thus dampening the hopes of those who felt that somehow a

²⁰ *Report of the Proceedings of the A.F.L. Convention, 1936*, pp. 552-53.

compromise formula might be evolved. Leaders of both organizations have, however, made it clear that they have by no means closed the door to labor unity.

It might be assumed that a bitter quarrel of this sort would severely handicap the recruiting of new union members on either side. Instead the feud has had a tonic effect upon both groups. The whole country became well aware of the two organizations through radio speeches, the press, public meetings, and debates in local unions. Large money outlays by the C.I.O.²¹ enabled it aggressively to press its organizing campaigns in all basic industries where its gains exceeded the most optimistic expectations. As it gathered strength, employers came to view the C.I.O. as "Public Enemy No. 1"; the steel industry alone, for example, spent \$400,000 on a series of advertisements directed against the Steel Workers Organizing Committee, a C.I.O. affiliate. In 1936 the C.I.O. made especial strides in the rubber industry; in 1937, in steel and autos and textiles; in 1938 and 1939, in the radio, the electrical, the communications, and the packing-house industries.

The A.F.L. was likewise to benefit in a most extraordinary manner by the turn of events. Employers who had long discounted the honeyed words of William Green began to wonder whether after all they might not find some degree of peace and comfort in union-management co-operative agreements with old-line A.F.L. unions. Such sentiments were likely to result in tangible expression whenever bands of C.I.O. organizers appeared at factory gates. In not a few cases when the C.I.O. had organized the workers and called a strike, it found that the embattled employer had signed an agreement with the A.F.L., which entered the conflict as the stout ally of the employer.

Although the organizing gains of the contestants are discussed in a later section, it is important here to note that these gains had a distinct bearing upon the continuing peace negotiations. By the end of 1938, the A.F.L. was confronted with the fact that the C.I.O. was claiming more members than the parent organization. At the same time, the Federation leaders contended that even without the C.I.O. unionists, their membership was larger than it was before the expulsions. As would be expected, each side accused the other of inflating membership figures.

The fact that the C.I.O. had achieved outstanding success and that at the same time the A.F.L. claimed not to have been weakened made it difficult to break the deadlock into which negotiations repeatedly lapsed. Although each side was beset with petitions from hundreds of affiliated locals pleading for an end to the fratricidal warfare, neither would yield sufficiently to permit a settlement. In October, 1937, for example, Philip Murray, chairman of the C.I.O. peace committee, proposed to the A.F.L. committee

²¹ Its expenditures for the three years, November 1, 1935—November 1, 1938, totaled \$3,510,000.

that a three-point plan of settlement be adopted: (1) that the A.F.L. "declare as one of its basic policies that the organization of the workers in the mass-production marine, public utilities, service and basic fabricating industries be effectuated only on an industrial basis"; (2) that the A.F.L. create an autonomous C.I.O. department, with which all existing C.I.O. unions would be affiliated and which would have sole jurisdiction in the above-mentioned industries; (3) that a convention be called at which all unions of the A.F.L. and C.I.O. would be asked to approve this agreement and work out details of its administration.

When a counterproposal was offered by the A.F.L. extensive discussions ensued, but the two versions of subsequent conferences differ so completely that they cannot be reconciled. The A.F.L. claims that the conferees reached a binding agreement: (1) joint conference committees equally representing the A.F.L. and C.I.O. would work out the jurisdictional conflicts relating to each of the twenty new unions chartered by the C.I.O.; (2) when these conflicts were adjusted, the membership of all the C.I.O. unions would be admitted into the A.F.L. concurrently with the original C.I.O. organizations; (3) with the adjustment of these matters, the A.F.L. committee would consider recommending that affiliates of the A.F.L. could only be suspended or have their charters revoked on direct authority of a convention of the A.F.L.; (4) those industries in which the industrial form of organization would apply would be specified; (5) a special convention of the A.F.L. would be called within a reasonable time after all matters had been adjusted.

The A.F.L. alleges that this agreement was scuttled by John L. Lewis, who demanded that all thirty-two C.I.O. unions be immediately chartered and that matters in dispute be taken up in conference "but with the understanding that when these unions were admitted to the A.F.L. they could not later be suspended if the points of conflict were not adjusted." The A.F.L. held that such a proposal would be impractical for it would establish dual unionism within the A.F.L. Since neither side would yield, negotiations broke down.

The C.I.O. version of the conferences differs greatly, for it asserts that the A.F.L. insisted upon the following program: (1) all C.I.O. unions which had held charters from the A.F.L. would return immediately to the A.F.L. fold and would be restored to their constitutional rights; (2) the newly organized C.I.O. unions, which did not have A.F.L. charter rights, would have their position settled by conference "for the purpose of bringing about an adjustment to bring the membership into the American Federation of Labor upon terms and conditions mutually agreeable"; (3) organization and administrative policies which were in dispute would be referred to the next convention of the American Federation of Labor and in the meantime

active organization would go forward. (4) The C.I.O. was immediately to be dissolved.

The C.I.O. committee deemed the A.F.L. proposals unacceptable because they meant that the miners, the garment workers and the older groups in the C.I.O. would be abandoning their recently organized industrial union allies. Furthermore, since it was possible that the craft union forces might command a vote in the next A.F.L. convention larger than that of the reinstated industrial union group and its allies, the former would be in a position to impose what would later have been called a "Munich settlement" upon the radio workers, the radio and electrical workers, the Steel Workers Organizing Committee, and other large blocs of new unionists who might, against their will, be parceled out among the hungry crafts of the A.F.L. Further negotiations followed, but the C.I.O. contends that the fact that the A.F.L. refused to state explicitly just what industries should be organized exclusively on an industrial basis indicated that the A.F.L. had no power to waive the jurisdictional rights of its affiliates. In turn the C.I.O. refused to accept the procedure of negotiating the question of just how many members of the Steel Workers Organizing Committee (or other affiliates) should be passed over to craft unions claiming jurisdiction in the field.²²

NEGOTIATIONS DURING 1938 AND 1939

During 1938 the feud was kept at fever pitch as each side accused the other of scuttling the peace negotiations. In fact, it appeared evident that some of the more timid elements in the C.I.O. had been pressing hard to restore peace and were willing to chance the verdict of committees constituted along the lines suggested by the A.F.L. The International Ladies' Garment Workers' Union, with 250,000 members, made overtures of this type in the summer of 1938. Finding John L. Lewis and his associates of a more uncompromising temperament, the I.L.G.W.U. became, in November, 1938, an independent organization, proclaiming that it would rejoin any united American labor movement.

In October and November, 1938, President Franklin D. Roosevelt addressed messages to the A.F.L. and C.I.O. conventions in which he expressed the hope that "every possible door to access to peace and progress in the affairs of organized labor be left open." "Continued dissension," he held, "can only lead to loss of influence and prestige to all labor."²³

²² *Proceedings of First Constitutional Convention of C.I.O.*, 1938, pp. 92-96; *Report of the Proceedings of the A.F.L. Convention*, 1938, pp. 86-93.

²³ *Proceedings of First Constitutional Convention of C.I.O.*, p. 90. The C.I.O., in fact strengthened its stand at this convention, resolving: "The C.I.O. states with finality that there can be no compromise with its fundamental purpose and aim of organizing workers into powerful industrial unions, or with its obligation to fully protect the rights and interests of all members and affiliated organizations. The C.I.O. accepts the goal of unity of the labor movement and declares that any program for the attainment of such goal must embrace as an essential prelude these fundamental purposes and principles." *Ibid.*, p. 96.

This plea was reinforced by thousands of messages which poured in on the two conventions. Although both groups immediately agreed to "keep the door open," each refused to give ground. When the Federation held that Lewis's leadership of the C.I.O. was a barrier to peace, John L. Lewis dramatically agreed to resign from the C.I.O. chairmanship if William Green would quit the A.F.L. presidency and if to do so would facilitate peace. This proposal was speedily rejected by the opposite camp. On October 15, 1938, Secretary of Labor Frances Perkins suggested a commission of thirteen to settle the matter. Each faction was to choose five commission members. Three disinterested persons were to be jointly selected. Early in 1939, President Roosevelt again pressed for unity and called representatives of both sides to the White House. All these parleys were inconclusive and the close of 1939 found the situation unchanged. C.I.O. leaders privately stated that they could see no possibility of unity on an honorable basis and hence were pressing to build their organization to a point where it would be measurably stronger than the A.F.L. and they might be able to dictate the terms of settlement. Perhaps with this in mind, the C.I.O. launched, in the summer of 1939, a retaliatory organizing campaign. The United Construction Workers' Organizing Committee was established at that time to give the C.I.O. a following in a field hitherto almost exclusively occupied by the strongest A.F.L. affiliates.

One feature of the 1939 negotiations deserves brief mention because of its novelty. John L. Lewis surprised the A.F.L. conferees by proposing that the A.F.L., the C.I.O., and the independent railway brotherhoods be brought together as autonomous sections of a new united labor organization, under the chairmanship of a member of a railway union. This proposal was scoffed at by leaders of the American Federation of Labor, who held it to be of communist origin.

THE 1939 CONVENTIONS OF THE A.F.L. AND C.I.O.

The A.F.L. and C.I.O. conventions, held in October, 1939, were greatly influenced by the outbreak of the European war. Renewed pressure was brought to bear upon both organizations by the Roosevelt administration and by moderate elements in the unions looking toward the signing of an armistice between the rival labor camps. The A.F.L. reiterated its willingness to negotiate but put forward no new proposals. The C.I.O. leaders contended that far outweighing labor unity was the necessity of extending organization to the unorganized. John L. Lewis optimistically predicted that in five years the C.I.O. would have ten million members.

Numerically the A.F.L. claimed more strength than its rival: 4,006,354 members in 105 national and international unions and 1,563 local trade and

federal labor unions as against a less well-authenticated total of 4,000,000 in the 45 national and international and 567 local industrial unions of the C.I.O. The A.F.L. suspended the 79,000 typographical workers at its convention for nonpayment of the anti-C.I.O. assessment and took steps which are likely to lead to the suspension of the brewery workers in the long-continued dispute with the teamsters.

Both conventions were marked by loud criticism of the National Labor Relations Board. The A.F.L. heard charges that the Board was the tool of the C.I.O. The latter contended that the Wagner Act had been perverted by Labor Board members in the attempt to appease the A.F.L. and that "craft raids" upon industrial unions had been sanctioned.

On the question of international peace, the two conventions were in accord. Both William Green and John L. Lewis laid stress upon maintenance of American neutrality. Both emphasized the necessity of preserving our own democratic institutions. Both stressed the need for legislative efforts looking toward the solution of the unemployment problem. The goal of the A.F.L. was the thirty-hour week with no reduction in weekly incomes. The C.I.O. stressed the expansion of public works, the development of work programs for jobless youths, and the extension of federal housing.

WEAPONS IN INTERUNION CONFLICT

The four years of civil war have seen the use of varied weapons by the two contestants. The A.F.L. and its affiliates have drawn the following from their arsenal: (1) They have sought to paint the C.I.O. as communistic in origin and in operation. Wherever possible, C.I.O. leaders are pictured as "Reds" in intimate connection with Moscow. In contrast, of course, the A.F.L. unions are held to stand as a bulwark which protects the American public against alien "isms." This propaganda device has been supported by manufacturers' associations and trade papers and by a large portion of the press itself. Although many other instances might be quoted, perhaps the most striking appeal of this sort was made by President A. O. Wharton of the International Association of Machinists in the following letter:

INTERNATIONAL ASSOCIATION OF MACHINISTS

WASHINGTON, D. C.
April 20, 1937

GENERAL VICE PRESIDENTS
GRAND LODGE REPRESENTATIVES
BUSINESS AGENTS AND GENERAL CHAIRMEN

DEAR SIRS AND BROTHERS:

Since the Supreme Court decision upholding the Wagner Labor Act, many employers now realize that it is the Law of our Country and they are pre-

pared to deal with labor organizations. These employers have expressed a preference to deal with A.F. of L. organizations rather than Lewis, Hillman, Dubinsky, Howard and their gang of sluggers, communists, radicals and soap-box artists, professional bums, expelled members of labor unions, outright scabs and the Jewish organizations with all their red affiliates.

We have conferred with several such employers and arranged for conferences later when we get the plants organized. The purpose of this is to direct all officers and all representatives to contact employers in your locality as a preliminary to organizing the shops and factories.

With best wishes, I am fraternally yours,

A. O. WHARTON
INTERNATIONAL PRESIDENT ²⁴

The American Federation of Labor has furthered this effort to identify the C.I.O. with communist doctrines. "Let the workers of the country also take heed. The communists are more strongly entrenched in the C.I.O. than ever before. These hypocritical, insincere, conscienceless agents of Moscow are trying to use the labor movement as a revolutionary vehicle. They care no more for labor's welfare than they do for democracy. If ever the time was ripe for the workers of America to repudiate the C.I.O. and communism for their own good and for the welfare of the nation, that time has now arrived." ²⁵

(2) The A.F.L. has been most active in setting up unions where possible within the jurisdictional fields formerly occupied by organizations now in the C.I.O. In coal mining, for example, the Progressive Miners of America were given a charter in May, 1937. This dissident group of Illinois coal miners which had broken from the United Mine Workers in 1932 immediately began a campaign in other mining regions in the hope of weakening the United Mine Workers. Other even less successful efforts have been made in the motor industry, where a competitor of the United Automobile Workers has been established, and among newspaper reporters, where a competitor of the American Newspaper Guild has been launched. The Federation has also chartered a union in the metal mining field and, in textiles, is supporting its affiliate, the United Textile Workers.

In order to compete with the C.I.O. organizations the A.F.L. affiliates have chartered industrial locals in many fields. Thus the International Brotherhood of Electrical Workers has liberalized its charters in order to gain members in competition with the United Electrical, Radio and Machine Workers of the C.I.O. The machinists' union and the carpenters' union have also broadened the orbit of their negotiations. Flexibility has been frequently demonstrated where there is an opportunity of securing a collective bargaining agreement at the expense of a C.I.O. affiliate.

²⁴ Quoted in J. Raymond Walsh, *C.I.O., Industrial Unionism in Action*. W. W. Norton & Company. New York. 1936. P. 215.

²⁵ Release of A.F.L. Weekly News Service, August 31, 1939.

(3) The A.F.L. unions appear to have entered into agreements with employers in industries where C.I.O. organizing campaigns are in progress. When, for example, in the spring of 1937 the Consolidated Edison Company of New York was faced with a C.I.O. organizing campaign, the company signed a contract with an A.F.L. affiliate, the International Brotherhood of Electrical Workers, even though at the time it had only a few members in the employ of the company. Nevertheless, the union and the company attempted to stampede employees into joining. Altogether, ten collusive contracts of this type have been set aside by the National Labor Relations Board,²⁶ but these are but a fraction of the actual instances of this practice.

(4) The A.F.L. has also been quick to capitalize on discontent in C.I.O. unions and has sought to finance an active fight on the C.I.O. On May 25, 1937, the Federation voted a special assessment of one cent a member a month for an "aggressive militant organizing campaign." This assessment, which has been continued by subsequent conventions, led to considerable controversy when some unions, notably the International Typographical Union and the brewery workers, either refused to pay it or paid it under protest, contending that it was in reality intended as a war chest to fight the C.I.O.

(5) Far more important than their organization of new, competitive unions has been the policy of the Federation to purge its state and its local bodies of all C.I.O. affiliates. The Federation has hoped in this way to isolate the C.I.O. locals and protect A.F.L. supporters from the proselyting efforts of the rival organization. This self-inflicted surgery has been difficult and highly painful, not to say dangerous. Many of the state federations of labor have for years been highly independent bodies, whose officers have frequently been believers in industrial unionism. In states dominated by the mining industry, to take an outstanding example, A.F.L. leadership was long in the hands of the members of the United Mine Workers. The extensive co-operation of such leaders with the leaders of other A.F.L. affiliates brought a feeling of mutual confidence. The task of unseating these officials and of reorganizing the state bodies has been troublesome and has frequently lost A.F.L. the support it sought to save. A similar problem arose in many city central bodies where not infrequently the expulsion of the C.I.O. delegates meant the departure of the majority group. On all sides the Federation has encountered unexpected repercussions from its efforts to divide union workers who, in local areas, had found no grounds for conflict.

(6) Another method of warfare on the C.I.O. has been that of political pressure. The A.F.L. has campaigned aggressively to have the Wagner Act changed so as to compel the National Labor Relations Board to make the

²⁶ Robert R. Brooks: *Unions of Their Own Choosing*. Yale University Press. New Haven. 1939. Pp. 100 f.

unit of election, where possible, the craft. It has dissented vigorously from those decisions of the Board which tended toward grouping a whole industry as an appropriate bargaining unit.²⁷

In a number of fields it has been hard to discern whether the Federation has adopted a policy to spite the C.I.O. or whether a new trend has set in. In the endorsement of candidates in state and senatorial elections, sharp dissension has occurred when, as in California or Ohio, the A.F.L. endorsed a reactionary candidate in preference to a candidate endorsed by its rival. In lobbying on current legislation, the Federation has come far closer to the position of the National Association of Manufacturers than has been historically its custom and, in fact, certain parts of the two programs with reference to the amendment of the Wagner Act were quite similar. Some politicians seeking to court the labor vote have welcomed this opportunity to be "for labor" at a minimum cost.

On the question of international labor affiliation, the Federation's policy has doubtless been influenced by the quarrel. In 1919, under Samuel Gompers, the Federation had acquired membership in the International Federation of Trade Unions. This organization has had a mild socialistic tinge which so troubled Gompers that in 1921 he secured the withdrawal of the A.F.L. on the ground that the Federation would not be committed "to a revolutionary principle." In 1937 the American Federation of Labor reaffiliated with the I.F.T.U. Skeptics regarded this association with the far more radical European unions as a move instituted to forestall possible C.I.O. affiliation. Supporters of the A.F.L., however, viewed it as a move intended to assist the continuation of the free trade-union movement throughout the world in a period of turmoil.

In summary, it may be stated that since the split the A.F.L. has been highly opportunistic but has been definitely more energetic. Its leaders, like those of the C.I.O., have been bound by a certain vaguely defined loyalty to the New Deal and especially to President Franklin D. Roosevelt. Neither group can depart from certain essentials demanded by the rank and file—adequate relief, minimum wage legislation, a strengthening of social insurance laws, and opposition to fascist trends. Yet, on the whole, the Federation has acted the part of a patriarch scolding and where possible chastening an erring son while urging him to return to the roof of his parent.

The tactics of the C.I.O. in the conflict have not been as involved as those of the American Federation of Labor. The C.I.O. has been on the offensive. Its task has been essentially that of recruiting members from the unorganized trades, although it has not been averse to enlisting dissident groups which

²⁷ The Board had held that the industrial unit should be followed where it is not shown that crafts were entrenched or were separable either by custom or tradition. Robert R. Brooks: *Unions of Their Own Choosing*, *op. cit.* Chap. VI.

strayed from the A.F.L. fold. This practice led to bitter condemnation from William Green:

Organizations have been raided and some have been completely destroyed. The forces of Labor in many localities have become divided into warring camps. The drive of the C.I.O. has been more largely against the organized workers who were affiliated with the American Federation of Labor than in any other field. They have invaded maritime organizations, building trades, metal trades, amusement trades, catering trades, organizations of government employees, state federations of labor, city central labor unions, and local federal labor unions. No organized unit connected with the American Federation of Labor has been spared. The raiding, ripping, tearing process of the Committee for Industrial Organization has been carried forward among organizations firmly established and chartered by the American Federation of Labor in every state, city and community throughout the country. It has been a campaign of attempted disruption. Open warfare has been waged by the Committee for Industrial Organization against the American Federation of Labor.²⁸

Through 1936 and early 1937 C.I.O. success was almost unparalleled in American labor history. Absorbed in the task of recruiting new members, the C.I.O. wasted little time on the A.F.L., save to indulge in occasional name calling. The year 1937, however, brought depression and important setbacks. Internal dissension became more marked as demands for reconciliation with the A.F.L. came to carry more weight in C.I.O. ranks. In 1938 the organization assumed a more permanent form, changing its name to Congress of Industrial Organizations, and by 1939, although reconciliation was still spoken of, it was treated as a remote possibility. The C.I.O. was charting its own course and considered itself the true spokesman of American labor.

The history of the C.I.O. aspect of the controversy must be written in terms of its major organizing campaigns and of the organizations which it set up to compete with those of the American Federation. We turn first to the motor campaigns of 1936 and 1937.

Organization of the automotive workers. In spite of marked opposition the C.I.O. registered a series of important victories in the automotive industry, which had previously remained almost impervious to union organization. These gains were in part due to an increasingly favorable economic setting, in part to the vigor with which the campaigns were pressed, and in part to the employment by the C.I.O. of new, decisive strategies such as the sit-down strike. Some measure of the advance is also to be attributed to the increasing effectiveness of the National Labor Relations Board in securing compliance with its orders. This situation was climaxed by the decision of

²⁸ *Report of the Proceedings of the A.F.L. Convention, 1937*, pp. 108 f.

the Supreme Court on April 12, 1937, which upheld the right of the Board to intervene in autos and steel unions.²⁹ The exposures by the La Follette Civil Liberties Committee of the Senate as to the extensive use of industrial spies, and the enactment of the Byrnes Act prohibiting the transport of strike-breakers in interstate commerce tended to make employers somewhat more cautious in combating labor organization. Moreover, the political pendulum had swung so definitely toward labor in many states that governors and local administrative authorities were less prone to throw their power on the side of management.

The United Automobile Workers of America had been suspended from the Federation in September, 1936, when it had a membership of 30,000. One year later it claimed 400,000 members and contracts with 381 companies, including all major automobile manufacturers except the Ford Motor Company.

The greatest victory in this field was the signing of General Motors. In December, 1936, Executive Vice-President William S. Knudsen, in speaking before the Indianapolis Chamber of Commerce, had declared that "there is no attempt on our part to discourage organization of any sort as long as it is done on legal and constructive lines. I think collective bargaining is here to stay, but I do think collective bargaining ought to take place before a shut down rather than after."³⁰ When the United Automobile Workers wrote the company asking that they be recognized as a bargaining agency and suggested a conference to discuss speed-up, job insecurity, seniority, and piecework abuses,³¹ however, General Motors declined to participate in a conference and suggested that the matters proposed for discussion be taken up with local managers of the company's subsidiaries.

The spontaneous strikes that developed almost immediately, starting in the Fisher Body Plant in Cleveland on December 28, 1936, and spreading to Flint two days later, produced a tie-up that soon crippled production badly. The C.I.O. had earlier planned to make its first major assault on steel, and consequently had vainly sought to hold back the motor strikers. In January, 1937, one of the most crucial campaigns of American labor was fought. On the employer's side was the largest motor company in the world, General Motors, which owned eight subsidiaries, automobile-producing companies with eighteen plants, as well as twenty body and parts companies, and airplane, real estate, and financial interests.

Long a citadel of open-shop industry highly profitable to its owners, the company had previously been able to keep labor unrest under control by relatively high hour and piece rates and by the employment of young vigor-

²⁹ See Book V, end of Chapter 30.

³⁰ Walsh, *op. cit.*, p. 110.

³¹ *Ibid.*, p. 111.

ous workers, most of whom were new to industrial centers. Its far-flung plants made it difficult for labor organizations to secure the co-ordination necessary for effective organization. Through company unions, recreational programs, and stock-ownership schemes the corporation tried to direct labor activities into safe channels. Discontent was reported by spies secured from private detective agencies.³²

General Motors was, however, vulnerable. The integrated character of its operations made a stoppage at one point disastrous. It was not prepared for the tactic of the sit-down strike. Injunctive procedures, full-page open letters in the newspapers, citizens' committees, and attempts to shift production to areas which had "remained loyal" were unavailing in the face of the union drive. The union held the strategic bottlenecks of the company's operations and General Motors began to feel the loss of competitive markets. When, after more than six weeks, Governor Frank Murphy of Michigan proposed a compromise settlement, General Motors finally capitulated. Under the terms of the settlement the United Automobile Workers secured exclusive recognition for its organization in twenty General Motors plants for a period of six months. In forty-nine other plants it was to bargain only for its own members. Strikers were to be re-employed without discrimination and all court prosecutions on the part of General Motors were to be dropped. Machinery for handling grievances and for allowing seniority rights was set up under the agreement. The company had avoided the closed shop but, as later events showed, it had given the United Automobile Workers a pivotal position in labor relations in the industry.

Some smaller companies in the field had been organized earlier, in fact, the Chrysler plants, at the time of the General Motors settlement, had a substantial union membership. The union had so penetrated the Chrysler company-union plan that one hundred two of the one hundred twenty works council representatives asked the company to recognize the United Automobile Workers.³³ When the Chrysler officials side-stepped an agreement with the representatives of that union at a joint meeting, a sit-down strike was called on March 8, 1937. After a protracted conflict Governor Murphy was, on April 6, able to secure a settlement which provided for seniority rights, the adjustment of grievances, and an agreement that the company would not seek to undermine the United Automobile Workers. The United Automobile Workers, however, did not secure sole bargaining rights.

The General Motors fight is described by Edward Levinson as "the most significant industrial battle since labor's defeat at Homestead. It held in its hands the future of the C.I.O. and the new labor movement which was soon to sweep millions of American breadwinners into its ranks. It

³² Leo Huberman, *The Labor Spy Racket*. Modern Age Books, Inc. New York. 1937.

³³ Walsh, *op. cit.*, p. 127.

aroused bitterness equal to that which accompanied the brief heyday of the Knights of Labor. It was more than a strike."³⁴ Prior to the General Motors fight the C.I.O., in extended and hard-fought contests, had unionized the major plants in the rubber and glass industries. The next move was on steel.

Organization of the steel workers. It was in steel that the easiest victory and the most serious setback occurred. The victory lay in the securing of a collective bargaining agreement with the United States Steel Corporation, long considered the strongest American foe of unionism. More than thirty years before this company had eradicated unions from its mills and, up until 1934, from its mines. It had elaborate spy services, ample finances, and the backing of the strong American Iron and Steel Institute, the trade association in the field. The quick agreement with United States Steel may be traced to the political and economic strength of the Steel Workers Organizing Committee; to the desire of the corporation executives not to lose profits during a period of industrial expansion; to tactical blunders on the part of executives in advertising the union through their too vigorous opposition to the unionization campaign; and to the tardy establishment of employee-representation machinery which was easily captured by the S.W.O.C. Even the last-ditch tactic of giving a 10 per cent wage increase through the employee-representation plan failed to stem the tide. Chairman Myron C. Taylor felt that there was "grave danger . . . in allowing events to proceed to a point where the ordinary rules of reason would not govern."³⁵ After extended talks between Mr. Taylor and John L. Lewis, a face-saving formula was reached on March 1, 1937, which allowed the subsidiary corporations of United States Steel to establish collective bargaining with the S.W.O.C. The settlement included a general wage increase, a forty-hour week, and the compulsory arbitration of unsettled grievances. Though the corporation maintained a nominal right to bargain with other employee organizations, these soon disappeared when corporation support was withdrawn after the Supreme Court decision on company unions.³⁶

The effect of this defection from the united front of steel companies was marked. Through the spring of 1937, agreements were signed with Jones and Laughlin, Wheeling Steel, McKeesport Tin Plate and dozens of other smaller companies. By the year's end, membership in the union was placed at 400,000.

There remained several important steel companies which refused to negotiate. These included National Steel Corporation, Republic Steel, Beth-

³⁴ E. Levinson, *Labor on the March*. Harper & Brothers. New York. 1938. P. 149.

³⁵ "Ten Years of Steel." Extension of remarks by Myron C. Taylor. Annual Meeting of Stockholders, United States Steel Corporation, April 4, 1938.

³⁶ Levinson, *op. cit.*, p. 198.

lehem Steel, Inland Steel, and the Youngstown Sheet and Tube Company. Their spokesman, Tom M. Girdler of Republic Steel, refused to enter into collective bargaining negotiations and precipitated one of the bloodiest of recent American labor combats.³⁷

The details of this strike, fought in the spring and summer of 1937, need not be included here. What is important is the failure of the strike due to the extensive use of propaganda, spies, strikebreakers, police, and national guardsmen in centers stretching from Johnstown, Pennsylvania, to South Chicago, Illinois. The most serious incident was the slaughter of ten steel strikers by Chicago police on Memorial Day in 1937.

The "little steel" fight was, however, by no means an unqualified loss. The National Labor Relations Board, in a decision later upheld by the Supreme Court, condemned the Republic Steel Company for improper interference and called for the reinstatement of several thousand strikers and the establishment of collective bargaining relations with the S.W.O.C. All indications suggest that the S.W.O.C. will extend its control in the industry despite its temporary setback.

Weaknesses in the C.I.O. The organizational strides made by the C.I.O. in other fields during 1937 were impressive. In major industrial centers the chant of "C.I.O." before factory gates was enthusiastically received by the workers. The gains in wages and improved conditions were real and tangible. The movement rapidly developed a mass following both by directly negotiated agreements and by elections. In the elections conducted by the National Labor Relations Board between October, 1935, and December, 1937, the C.I.O. won a majority vote and thus became the exclusive bargaining agent in nearly twice as many cases as the A.F.L. Specifically, in those instances in which the two organizations were pitted against each other the C.I.O. won 160 elections (with 33,000 balloting) to 48 (with 11,000 balloting) in which the A.F.L. was successful.³⁸ C.I.O. unions were successful in 47.1 per cent of cases before the Board, A.F.L. in 26.3 per cent, Standard Independent unions in 1.4 per cent, and Company Unions or District Unions in 10.7 per cent. All types of labor organization were defeated in 14.5 per cent.

This record of organizational success was not paralleled by equal success in establishing effective and harmonious union control within C.I.O. affiliates. From the start there were elements of discord in the C.I.O. which tended to become more pronounced with the passage of time. In the first place, a number of C.I.O. leaders, anxious to assist in industrial union drives into new territories, were equally anxious not to sever their last tie

³⁷ *Ibid.*, p. 203.

³⁸ *Monthly Labor Review*, July, 1938, pp. 31-38.

with the older organization. Wavering support of this type appeared in the International Ladies' Garment Workers which, as already noted, finally broke with the C.I.O., and in the Cloth Hat, Cap and Millinery Workers Union. The International Typographical Union, whose president, Charles P. Howard, became secretary of the C.I.O. in 1935, was also aloof. In 1938 Howard lost a close contest for re-election to his union presidency. With his death shortly thereafter, the link of the C.I.O. with the printers was greatly weakened. A number of other unions, such as those of the brewers and the teachers, whose early sympathies tended toward the C.I.O. found their membership divided on the question and it seemed wisest for them to remain in the A.F.L. The pressures from wavering elements and the overwhelming desire for labor unity prolonged the period in which the C.I.O. remained a temporary organizing committee.

The second element of weakness in the C.I.O. ranks became apparent during the sharp business slump in the fall of 1937 which paralyzed major American industrial centers. Organizing drives were retarded both by the lack of adequate financial reserves and by the workers' fear of a shut-down. In many of the smaller communities managers were even able to persuade their workers that the C.I.O. was responsible for the recession.

In the third place, not all of the newly formed mass organizations in the C.I.O. were able to keep clear of careerists bent upon developing personal political machines. Out of the honeymoon of self-sacrifice to build new unions emerged a jockeying for power and intense personal rivalries in a number of affiliates. The worst situation appeared in the United Automobile Workers. This large, sprawling organization of 400,000 members had brought to the fore a number of leaders in each of its larger units. Its president, Homer Martin, was a former clergyman whose oratorical abilities had given him a position of leadership. When the A.F.L. was in control of the auto workers, hostility toward the Federation's appointees tended to allay factionalism. Under the C.I.O. a feud developed which was marked by accusations of corruption and by suspensions. The C.I.O. officials had sought repeatedly and without marked success to stop the quarreling in the union. In May, 1938, a treaty was signed between the contesting forces which lasted but two months. On August 25, 1938, John L. Lewis announced a new "constructive proposal to restore stability in the United Automobile Workers and to abate the public nuisance which the controversy has become."³⁹ Under this proposal the suspensions of the minority of the officers by the majority would be lifted and the issues at stake settled by the next convention of the union. The Martin leadership had accused its ousted opponents of being communists. They had replied that Martin himself was under the domination of Jay Lovestone, the leader of a small communist faction

³⁹ *C. I. O. News*, August 27, 1938, p. 3.

which had been ousted by the Communist party. Trials and caucuses in Detroit and Toledo brought forth charges of unlawful procedures and strong-arm squads used by the union president to quell opposition. By 1939 the influence of President Martin within the union had so waned that he was removed from office by the convention. He then formed the Industrial Union of Auto Workers of America, which was promptly chartered by the A.F.L. Ill-timed and unsuccessful strikes sapped much of the remaining power of the Martin organization, leaving the organized automotive field in the almost undisputed control of the C.I.O. affiliate.

If the auto workers' case stood by itself, one might contend that it was an isolated instance of an ineffective president seeking to hold power through dubious methods. The same problem has, however, cropped up in a number of C.I.O. unions, notably on the Pacific coast. There, after a conflict between leaders, the sailors broke away from an alliance with the C.I.O.'s Longshoremen and Warehousemen's Union to form an independent union. In the Flat Glass Workers' Union, similar disunity called for adjustment by the C.I.O. In the textile industry, too, the C.I.O. has been beset by difficulties. One of the founders of the C.I.O. was the United Textile Workers of America, an organization which had met with indifferent success in numerous unionizing campaigns. The C.I.O. promptly set up the Textile Workers Organizing Committee, under the chairmanship of Sidney Hillman of the Amalgamated Clothing Workers. This move alienated Francis Gorman, the first vice-president and recognized leader of the United Textile Workers, for whom no place was found in the new set-up. Although the T.W.O.C. had won notable victories during 1937 and 1938, especially in New England, friction soon appeared and a number of locals broke away from the T.W.O.C., charging that that organization was dictatorially operated by outsiders who were not properly caring for local interests. The movement was led by Francis Gorman who claimed that the C.I.O. had not legally secured control of the United Textile Workers and that its old charter thus remained valid. The situation was somewhat clarified in 1939 when the C.I.O. forces convened to form a new organization, the Textile Workers' Union of America, with Emil Rieve as president. The A.F.L. in the meantime accepted Gorman and his followers into its fold. Although the C.I.O. forces dominate the wool, silk, and hosiery branches of the trade, this new A.F.L. affiliate is contesting for support among the cotton textile workers.

THE CONGRESS OF INDUSTRIAL ORGANIZATIONS

In 1938 the leaders of the Committee for Industrial Organization felt that the time had come to "fit the roof tree in a mighty new house of labor." For three years attempts at conciliation had failed and the prospect for

TABLE 34

REPORTED MEMBERSHIP OF C.I.O. AFFILIATES IN OCTOBER, 1938

NAME OF UNION	MEMBERSHIP
Aluminum Workers of America	25,600
Architects, Engineers, Chemists and Technicians, Federation of	7,525
Automobile Workers of America, United	381,200
Cannery, Agricultural, Packing and Allied Workers of America, United	124,750
Clothing Workers of America, Amalgamated	252,620
Communications Association, American	13,220
Die Casting Workers, National Association of	4,750
Distillery Workers Organizing Committee	2,876
Electrical, Radio and Machine Workers of America, United	157,891
Farm Equipment Workers Organizing Committee	20,718
Federal Workers of America, United	15,120
Fishermen's Union of the Pacific, United	6,171
Flat Glass Workers, Federation of	22,512
Fur Workers Union, International	45,345
Furniture Workers of America, United	35,775
Gas, By-Product Coke and Chemical Workers, District 50	55,220
Inlandboatmen's Union of the Pacific	3,117
Iron, Steel and Tin Workers, Amalgamated Association of	8,435
Leather Workers Association, National	15,218
Longshoremen's and Warehousemen's Union, International	33,210
Marine Cooks' and Stewards Association of the Pacific	8,212
Marine Engineers Beneficial Association, National	6,350
Marine and Shipbuilding Workers of America, Industrial Union of	24,709
Maritime Union of America, National	67,512
Mine, Mill, and Smelter Workers, International Union of	55,210
Mine Workers of America, United	612,113
Newspaper Guild, American	17,753
Office and Professional Workers of America, United	46,575
Oil Workers International Union	98,900
Optical Workers Organizing Committee	1,625
Packinghouse Workers Organizing Committee	75,712
Quarry Workers International Union of North America	10,110
Retail and Wholesale Employees of America, United (including Department Store Workers Organizing Committee)	52,617
Rubber Workers of America, United	63,717
Shoe Workers of America, United	52,127
State, County and Municipal Workers of America	52,111
Steel Workers Organizing Committee	525,612
Textile Workers' Union of America	450,300
Toy and Novelty Workers Organizing Committee	4,819
Transport Workers Union	90,125
Utility Workers Organizing Committee	15,518
Woodworkers of America, International	101,612
TOTAL	3,664,612
Local Industrial Unions	123,265
TOTAL	3,787,877

unity was increasingly remote. Charges had repeatedly been made by its opponents that the informal structure of the C.I.O. was but a means of allowing its chairman John L. Lewis, to be a labor dictator. Hence, on November 14, 1938, the first constitutional convention of the Congress of Industrial Organizations was convened at Pittsburgh, Pennsylvania. At the time of the convention, the C.I.O. claimed 42 national and international

unions and organizing committees, 675 directly chartered local industrial unions, 23 state industrial union councils, and 164 district, county, and city industrial union councils. Its total membership was recorded as 3,767,877.⁴⁰ National organizing committees had been established in the distillery, farm-equipment, optical, meat-packing, steel, textile, toy, and utility industries to facilitate organization. Their membership would later be transferred to permanent industrial unions. The state industrial union councils are counterparts of the state federations of labor of the A.F.L. The city and county industrial councils correspond roughly to the city central bodies of the A.F.L. except for the fact that they tend to cover wider geographic areas. Local industrial unions are formed where isolated groups are organized and cannot be logically attached to any national industrial union or organizing committee, for example, match workers, sugar workers, cemetery workers, razor workers.

The unions represented at the Congress are listed in Table 34, with their reported membership.⁴¹ It will be noted that the larger organizations were those in coal mining, steel, automobiles, textiles, clothing, and the radio and electrical industries. The United Cannery, Agricultural, Packing and Allied Workers of America reported 124,750 members in an industry which, a decade before, was almost totally unorganized.

Another view of the C.I.O. structure is given by Chart 9, which indicates the fields within which the C.I.O. had formed unions. Actually, of course, the coverage within these several fields is highly uneven. The bulk of C.I.O. strength centered in manufacturing and mining. In transportation, in the printing industry, and in the building trades, to mention only a few, other organizations had pre-empted the field. One sees, nevertheless, from this chart the goal toward which the industrial unionists are striving.⁴²

At the 1938 Congress, a constitution was adopted, under which John L. Lewis was elected president, Philip Murray of the Steel Workers Organizing Committee and Sidney Hillman of the Amalgamated Clothing Workers, vice-presidents, and James Carey of the United Electrical, Radio and Machine Workers, secretary. An executive board is composed of the officers and a member from each affiliated national and international union and organizing committee. This board, which in 1938 had forty-six members, was elected by the Congress from nominees of the respective affiliates. Under the constitution a member of the Executive Committee might call for a roll-

⁴⁰ Omitting the 250,000 members of the International Ladies' Garment Workers' Union which dropped its affiliation.

⁴¹ *Proceedings of First Constitutional Convention of the Congress of Industrial Organizations*, pp. 36-37.

⁴² It should not be assumed that these unions are not overlapping. The C.I.O. has not been exempt from jurisdictional problems. Should, for example, a worker in a plant making rubberized fabrics belong to the rubber workers or to the textile workers? Should office workers in a motor plant belong to the United Automobile Workers?

call vote on any question under debate by that body. In a roll-call, because each union representative commands as many votes as there are members of his affiliate, the larger unions have the preponderant strength.

The Congress of Industrial Organizations will hold annual conventions. Each national and international union and organizing committee and each local industrial union is given one vote for each member. No affiliate may be suspended or expelled except upon a two-thirds vote at the convention. Dues, payable to the C.I.O. by each national and international union

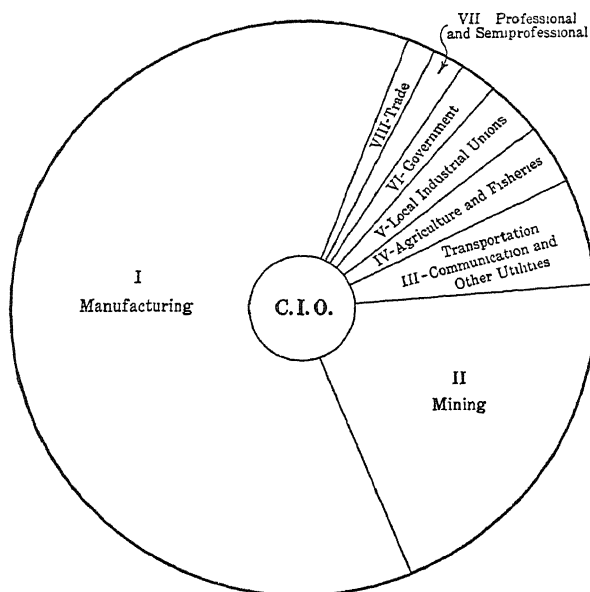


CHART 9.—Distribution of Membership of Unions Affiliated with the C.I.O. in October, 1938

and organizing committee, are placed at five cents per member per month.

The 1938 Congress was in marked contrast with the usual convention of the American Federation of Labor. The ovation it gave John L. Lewis lasted an hour. Songs featured its sessions. Throughout, its spirit was one of spontaneous enthusiasm and confidence in the leadership. Mr. Lewis sounded the keynote of the Congress when he said: "What the American Federation of Labor could not do in fifty-four years of agitation the Committee for Industrial Organization has done in less than three years."⁴³ He pointed to the Pittsburgh area as the most highly organized in industrial America and asked why, in the light of its national record, the C.I.O. "should as a movement be criticized, opposed, slandered and vilified, denounced from

⁴³ *Proceedings of First Constitutional Convention*, p. 9.

the street corners by its adversaries, and constantly opposed in high places when it offers to the community, to the state, and to the nation a program of rational procedure and orderly conduct, a program of working out in a peaceful way the problems which encumber the relations of labor and industry and finance in this country.”⁴⁴

A mere list of some of the adopted resolutions reveals the attitude of the delegates on many national and union problems: advocacy of the organization of Armour and Company and Swift and Company; the authorization of union labels; opposition to wage reductions; the promotion of consumers' co-operatives; opposition to Southern poll taxes; advocacy of a Southern organizing campaign; opposition to the persecution of Jews in Nazi Germany; endorsement of the unity of Negro and white workers; condemnation of the Chicago Memorial Day Massacre; support of the continuation of

TABLE 35

DISTRIBUTION OF MEMBERSHIP OF C.I.O. UNIONS IN OCTOBER, 1938*

FIELD	NUMBER OF UNIONS	MEMBERSHIP
I. Manufacturing.....	21	2,328,618
II. Mining.....	4	776,323
III. Transportation, communication, and other utilities.....	8	237,039
IV. Agriculture and fisheries.....	2	130,921
V. Local industrial unions.....	—	123,265
VI. Government.....	3	67,231
VII. Professional and Semiprofessional.....	3	61,853
VIII. Trade.....	2	52,617

* In 1939 the C.I.O. also launched the organization of construction workers, a field previously occupied exclusively by the A.F.L.

the La Follette Civil Liberties Committee; the freedom of labor prisoners; endorsement of a national health program; advocacy of more liberal old-age insurance and unemployment compensation; condemnation of the Ford Motor Company for refusal to enter collective bargaining agreements; endorsement of labor political action through Labor's Nonpartisan League; condemnation of the Hearst press for its opposition to organized labor; opposition to amendments to the National Labor Relations Act; support of a stronger wage-hour law; endorsement of federal aid for education; approval of a research and education department for the C.I.O.; endorsement of a program of government assistance to unemployed youth; opposition to the use of the National Guard in labor disputes; and support of a program of public works for unemployed workers.

THE OUTLOOK FOR PEACE

During 1939, the C.I.O. weathered a heavy attack from industrialists and the A.F.L. The United Mine Workers were able to secure a highly favorable

⁴⁴ *Ibid.*, p. 10.

union contract after an extended struggle; the Automobile Workers improved their position in the automobile industry; a number of additional steel and electrical workers' contracts were signed. Campaigns to organize the Bethlehem Steel Company and the remaining packing houses were under way. On Labor Day, 1939, the editor of the *C.I.O. News* was able to say:

William Green and his associates in the A.F. of L. executive council have had reason to complain of many "headaches" of late. The refusal of the International Typographical Union to pay the anti-C.I.O. assessment, even under threat of suspension from the A.F. of L., is one of them. The revolt of the actors' unions against corruption and dictatorship in the theatrical labor world is another. But there are also a dozen other less-publicized international situations which create an increasing demand for aspirins whenever the council meets. The widespread rebellion throughout the A.F. of L. against amendment of the Wagner Act has revealed the weakening grip of the Federation's national leadership. The council is showing less and less capacity to suppress or to solve the many disputes which arise as the more healthy and progressive elements assert their rights and resist the council's reactionary policies. But the biggest headache of all for the A.F. of L. leadership is the fact that, while the Federation disintegrates and is torn with internal dissension, the C.I.O. has conclusively established its strength and stability and is making many sweeping advances. . . . When the C.I.O. was first formed farsighted labor men realized that the days of the Old Men of the Sea who had ridden so long on labor's back were numbered. They did not know how long the process would take. But they did know that eventually the newer and more vigorous labor movement would put an end to the misrule of the Old Men of the A.F. of L. Executive Council.⁴⁵

This appraisal of the situation is more than a trifle optimistic from the standpoint of the C.I.O. The balance between the two organizations is still comparatively even. The division of strength is perhaps best shown by industrial fields:

The extractive industries. Mining is dominated by C.I.O. affiliates, the largest of which is the United Mine Workers of America. The comparative membership in this sphere is approximately 750,000 for the C.I.O. as against 76,000 for the A.F.L. The militancy and the industrial union structure which have long been associated with the extractive industries account for the preference shown. It is by no means accidental that mining should be the hub of the C.I.O.

The building trades. In the building trades the situation is reversed. There the A.F.L. has the allegiance of more than three-quarters of a million

⁴⁵ *The C.I.O. News*, September 4, 1939. At the 1939 convention of the A.F.L., the International Typographical Union was suspended because of its refusal to pay the anti-C.I.O. assessment.

workers, organized principally in sixteen basic craft unions. Despite recurring family warfare, these unions have long been opposed to the industrial union idea. The C.I.O. has made few encroachments in this field, save among lumber workers in the Northwest. Even there the craft unionists have fought bitterly to oust the competitive organization. Within recent months, however, the C.I.O. has begun to organize building trades workers under the Construction Workers Organizing Committee headed by Arthur D. Lewis, brother of John L. Lewis.

Basic manufacturing fields. In the basic manufacturing fields, the C.I.O. has attained, with a few exceptions, marked numerical superiority over the A.F.L. Most of the men's clothing workers are in the C.I.O. Other large groups include the textile workers, the rubber workers, the iron, steel, and tin workers, the electric and radio workers, the automobile workers, the wood workers and the flat-glass workers. In contrast, the A.F.L. continues its strength in scattered segments of the manufacturing field. It has the allegiance of the cement workers and the pottery workers and of craft groups in the glass industry. It has a few garment workers and certain strength in tobacco, foods, and jewelry. In the metal and machinery field, four craft groups form the backbone of the A.F.L.'s hold: the Machinists, the Molders, the Firemen, and the Boilermakers. These groups, however, have much of their membership in railroad shops which they had entered long before the coming of the C.I.O. In paper and printing, the A.F.L. retains the dominant majority, but the position here is not clear because of the suspension of the typographical workers in 1939 for refusal to pay the anti-C.I.O. assessment.

Transportation and communication. The struggle between rival unions is perhaps most bitter in the transportation and communication field. In this sphere a three-way battle has ensued between bona fide independent unions and those affiliated with the A.F.L. and with the C.I.O. This has been made worse by old jurisdictional fights which have been accentuated by the growth of new means of transportation and communication. The well-seasoned independent brotherhoods still hold their grip upon railroad operation. The A.F.L. controls most organized street railway transportation (outside of New York) as well as most truck drivers. The strength of the C.I.O. is centered in the subway workers of New York City and in the maritime unions.

Trade. In the field of trade the A.F.L. has a slight numerical superiority, although neither organization has been able to make substantial inroads.

Professional and semiprofessional workers. Among semiprofessional workers the A.F.L. has great strength through the affiliation of the musicians and theatrical workers. The C.I.O., however, is rapidly developing white-collar units through the United Office and Professional Workers of America, the American Newspaper Guild, the Federation of Architects, Engineers, and Chemists and other affiliated bodies.

Government. Most unionized government workers are independent of both the A.F.L. and the C.I.O. Such independent unions, many of which are to be found in the postal service, have organized for purposes quite outside the scope of the organized labor movement. The largest independent union, the National Federation of Federal Employees, was suspended from the A.F.L. after a protracted conflict. The A.F.L. holds the affiliation of the Letter Carriers, the Fire Fighters, and the American Federation of Government Employees, the latter having been formed to combat the National Federation of Federal Employees. The C.I.O., which entered the government field in 1937, has as affiliates the United Federal Workers and the State, County, and Municipal Workers of America. Both groups are still relatively small.

Personal service. In the field of personal service the A.F.L. overshadows the C.I.O. It has the affiliation of the Barbers, the Building Service Employees, and the Hotel and Restaurant Employees—all groups with substantial memberships. The C.I.O., in contrast, has scattered laundry and hotel workers.

Agriculture. In agriculture the C.I.O. has distinct numerical superiority. Its United Cannery, Agricultural, Packing, and Allied Workers have achieved notable organizing success in a field which the A.F.L. had long neglected.

If, as has been indicated above, the A.F.L. has shown distinct weaknesses, the same may also be said of the C.I.O. In the first place, the C.I.O. has not yet solved the problem of securing adequate financial support from its members. Many of its newer affiliates are able to command large votes in Labor Board elections and receive enthusiastic response because of wage increases. They have, however, been faced with the problem that dues have not been promptly paid. When many workers are out of jobs or are on short time, nonpayment of dues becomes widespread.

The A.F.L. leaders also have another strong factor on their side. Their organization has considerable prestige in political circles through its age and through its conservative pronouncements. In the ranks of labor, there are many reactionaries who sincerely applaud William Green. And, to be

accurate, there are many workers in America who think Green and his associates a bit too radical.

Judging by other countries, the fact that the United States has competing labor federations is not unusual. It is perhaps more unusual that we do not have more competing organizations. In some countries the Catholics, for example, have established their own unions and their own federation, or various shades of political belief on the part of unionists have caused dissension and hence separate federative action, or other ideological differences have thwarted unification. One might, in fact, say that in Europe the normal situation has been disunity in trade-union ranks.⁴⁶ The issues about which the European organizations have split seem somewhat different from the issues which have disturbed our labor groups so profoundly, yet there are already some indications that the A.F.L. is becoming the haven for those unionists who wish to pin their faith in a reformed capitalist system and that the C.I.O. is developing a tendency toward independent labor political action and a program of moderate social reform.

This viewpoint was well put by a conservative delegate⁴⁷ to the 1938 A.F.L. convention:

Why waste time and energy endeavoring to amalgamate elements between which there is no possible harmonious affinity? We live in a nation of 130,000,000 people. There is not a man or woman in this convention who could begin to enumerate the religious creeds into which we are divided. We have political and partisan affiliations without number. We have divergent schools of economic thought, increasing in number, budding and blossoming in every academic shadow. What happens when organizations become top-heavy? When does the sloughing process begin? When issues of policy change the viewpoint and the clashing of human ambitions begins laying survey chains for a new line of demarcation. . . . Amalgamation of radically divergent bodies invariably involves compromise. And the burning question which brought about the separation—on which one do you stand ready to make surrender to pave the way to a new coalition? . . . One crowd looks at John L. Lewis, another crowd looks at William Green pleading for peace. There comes to my mind a sort of paraphrase on an old comic opera ditty which I used to hear twenty-five years ago when I was playing in a theater orchestra:

Cuddle up a little closer, William,
Cuddle up a little closer, John,
Ring the curtain down on labor troubles,
Another hot campaign will soon be on.

The reference is, of course, to the 1940 presidential campaign. If labor unity is not secured before then, it is entirely possible that many of the membership gains which have been associated with the work of the Na-

⁴⁶ "Trade Unions," *The Encyclopaedia of the Social Sciences*, Vol. XV. See also H. A. Marquand and Others, *Organized Labour in Four Continents*. Longmans, Green & Co. London. 1939.

⁴⁷ Delegate C. A. Weaver of the musicians' union. *Report of the Proceedings of the A.F.L. Convention 1938*, pp. 376-77.

tional Labor Relations Act will be erased with the election of an unsympathetic administration. The realization of this possibility is causing the more farsighted elements in both the A.F.L. and the C.I.O. to press with renewed energy toward the discovery of a solution of the problem. It cannot, however, be said that the conciliatory elements are on the ascendency. Early in 1940, the dispute was vigorously carried into congressional hearings on the National Labor Relations Board. Each faction wished to write into the Act specific provisions which would compel the Board in jurisdictional contests to favor its form of organization.

In the A.F.L. ranks the most active champion of peace was Daniel J. Tobin, president of the teamsters' and chauffeurs' union, which is perhaps the most powerful organization in the Federation.

SUPPLEMENTARY READINGS

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QUESTIONS

1. What verdict would you pass upon the 1935 conflict within the American Federation of Labor? Was the Executive Council of the Federation justified in suspending dissident unions? Was the issue strictly one of craft versus industrial unionism?
2. Assume that you were appointed arbitrator of the dispute between the A.F.L. and the C.I.O. What type of settlement would you make? Explain the reasons for your decision.
3. What have been the principal differences in the tactics employed by the A.F.L. and C.I.O. in their competition for members?
4. Why was the C.I.O. able to organize large numbers of steel and auto workers when the A.F.L. so signally failed in these fields?
5. How does the structure of the Congress of Industrial Organizations differ from that of the American Federation of Labor? Specifically, what is the relationship of the affiliates of each to the parent body? Which organization is the more democratic?
6. How do you account for the ability of the United Automobile Workers to secure a collective bargaining contract from General Motors? Were both sides justified in using the weapons they did? Explain.

CONTEMPORARY TRADE- UNION LEADERSHIP AND LEADERS

THE JOB OF THE UNION LEADER

AMERICAN labor leadership has tended to reflect the economic system within which it operates. Under this system, labor, skilled and unskilled, is sold at a price. The determination of that price is a matter for bargaining. Whatever aspirations members of the labor movement may have concerning fundamental changes in the system, the union leader has as his central task the striking of a wage bargain acceptable to his membership. An agent for the sale of a perishable type of good, labor ¹—as such he is likely to breathe the same atmosphere and to possess the same virtues and vices of those interested in the sale of other goods. He must operate within the framework of a profit-seeking order in which are incorporated various levels of business and political ethics. Just as the aluminum manufacturer or shoe merchant will consider the merits of the tariff, of price fixing, or of output restrictions in terms of their effect upon his business, so the labor leader tends to reflect the attitude of a group of workers who are much more interested in their immediate rates of pay and in their security of employment than in the working class as a whole. To be sure, there are labor leaders who look beyond their immediate trade, but these are the exceptions and not the rule.

The belligerent atmosphere which has surrounded the labor movement

¹ Union leaders have long objected to the classification of labor as a commodity; yet in the capitalistic market it is but a good of a specialized type.

has helped to shape the character of its leadership. The labor movement has been a minority movement, stoutly resisted by employers' organizations. Only when unions have become powerfully entrenched have they become respected as permanent institutions. Typically a person pushing his way to the fore as a labor leader had to be a combination of orator and military tactician; one who could not only rouse the rank and file to maintain the organization at all hazards but keep it at a sustained high pitch.

Some factors in this turbulent scene have created a genuine sense of devotion and service on the part of leaders; others have stripped the movement of its most competent people. The sacrifices incident to becoming a union leader tend to eliminate those who lack integrity or loyalty. Competition for leadership is keen. Only those willing to stand the criticism of members, to risk the loss of a job through black-listing, and to carry on the mass of routine required in the local organizations are likely to gain widespread support. When an individual is once lodged in office, his desire to better the conditions of the membership is reinforced by the group traditions. The leader desires to be successful in the eyes of his followers.

On the other hand, able and seasoned union executives are likely to be offered lucrative posts in business or in government service. Even those who remain in their union positions out of loyalty tend to lose their militancy with the passing of years. Many effective leaders have graduated into easy chairs where they have lost touch with the reforms which they earlier championed. The political machinery which has grown up in many organizations as a means of eliminating effective leadership opposition has fostered just this situation. A self-perpetuating inner circle of union officers will not long retain its vigor. Despite all safeguards surrounding union elections, the level of democracy is not superior to that existing in other fields.

Much stress has been laid upon the bribing of union officials. The danger of corruption is apparent. Wage negotiations are often conducted in distant hotels behind closed doors. The local members have no clear idea of how their leaders are interpreting or enforcing agreements. In fairness it should be admitted that often the situation is so complicated that it is difficult to determine what the organization should insist upon. In such circumstances, unscrupulous leaders may, for a price, subordinate the union's interest to their own. Despite these dangers, it is probable that the level of union integrity is high. Racketeering leaders, long a problem to organized labor, have not been characteristic, but they will remain as long as business interests find it advantageous to resort to bribery.

American labor leadership thus consists of men of varying abilities and differing aims. Most are dull but honest. A union is not a perfect democracy; its leaders are not statesmen. In the circumstances of its development, hard-fisted fighters have emerged. Some of these are now dead and are succeeded

by "labor politicians." Many of the survivors have lost their fighting qualities. A few have kept their militancy, but are opportunistic, watching the sentiments of their constituents before formulating a policy. Rank-and-file opinion may dominate the local leadership and even penetrate deeply into the state organizations. The national officers are likely to reflect trends somewhat tardily for they soon lose close touch with local problems. For one thing, they enjoy higher living standards. While traveling they frequent the better hotels where, if no place else, they rub shoulders with employers.

Unless leaders are careful to check the encroachment of their personal living standards upon their opinions, they soon come to be extremely reactionary. Considered as radical in business circles because of their union office, they tend to compensate by showing rigid conformity in other fields. They frequently voice their faith in the sanctity of American institutions, in the flag, in the Army, in the American Legion, and they condemn all radical elements as "subversive" underminers of the Republic. They sweetly sing their lullabies of union-management co-operation, but they roar out their denunciation of sit-down strikes, mass picketing, and all political action on the part of labor, all of which they consider as menacing to a "sound labor movement." Under such leadership it is not surprising that many labor organizations have become complacent parts of the capitalistic system.

Union leaders secure and retain control of their organizations in varying ways. Each union has its own traditions, its own customs, and often its own self-perpetuating bureaucracy. The International Typographical Union, for example, in its leadership and its customs is markedly different from the American Federation of Musicians, or the International Ladies' Garment Workers. The Typographical Union has two well-developed political parties. It has a sense of its own importance. Its leaders stand for election on specific platforms. Its differences are not those between conservative and radical doctrines. Many important issues are submitted for a referendum of members. There exists a deep-seated loyalty to the organization as well as a pride in its democratic traditions.

The American Federation of Musicians is quite different. A large portion of its membership would never dream of attending a union meeting, to say nothing of casting a vote for officers. Members pay their dues reluctantly and object to the cost. They pay, however, because the union has delivered results in protected contract rates and because falling in arrears or violation of union rules bring heavy penalties. The high officials carry on from year to year with adequate salaries and adequate expense accounts. Organized opposition does not emerge. The union is a business organization.

The International Ladies' Garment Workers' Union is of still another type. It reflects the will of a large urban membership of varying nationalities and racial customs. In its ranks are many with strong radical leanings.

Its politics are conducted in an atmosphere of close scrutiny and some little distrust. Its leadership depends for support not only upon successful operations on the economic front but also upon the maintenance of ideological ties satisfactory to the majority of the membership.

Such diverse union practices suggest that there are a number of roads to union power. Often an alert member, endowed with a pleasing disposition and oratorical prowess, will become active in local meetings. He may in time secure the confidence of his fellows and represent them as shop chairman or as local union president. As he ascends the scale he may become a delegate to the city central labor union or to the national convention. His success frequently depends in part upon joining lodges, being active in such organizations as the American Legion, or working on behalf of a local Democratic or Republican political machine, but it is more important that he identify himself closely with a political machine within the union.

Union leadership is ordinarily recruited from its membership. Those who cannot talk glibly of the days when they were working at the bench and were bending their efforts helping to build the union have little chance of securing important posts. There is a distrust of intellectuals which is based upon a deep-seated feeling that only those who have actually worked at a trade can adequately understand its problems.

This process of drawing leadership from the rank and file has its advantages: it compels members of the organization to grapple with union problems and to take the consequences of any mistake in judgment. It also has its disadvantages in that it makes possible a leadership which lacks an adequate comprehension of the problems of an industry or a nation.

Once in power, the union leader naturally looks for means of making his union job secure. In some cases he achieves this through the business success of his organization, since satisfied members will not be disposed to support an opposition candidate. In other cases the leader will foster educational and beneficial activities that will meet with membership approval and thus solidify his position. Some will surround themselves with lieutenants who will act the role of "ward heelers." Others in less democratic organizations will have strong-arm squads to deal effectively with dissenters. A few organizations hold conventions only at infrequent intervals so that the official clique will be in little danger of losing their offices. False counting of ballots is another device sometimes resorted to for the same end.

The brief biographical sketches of a number of American labor leaders presented below should indicate the types of person pushed to the top of the labor movement. In one respect, such descriptions are necessarily incomplete. Most of the men here described represent the older group of well-seasoned unions and have tended to follow in the traditions of the movement. Whether

the leaders of unions in the newly organized mass-production industries will be of the same pattern is not yet clear.

WILLIAM GREEN, PRESIDENT OF THE AMERICAN FEDERATION OF LABOR

At the death of Samuel Gompers, on December 13, 1924, William Green, third vice-president of the American Federation of Labor, succeeded to Gompers' office. Green, then fifty-two, was "a Baptist who neither drinks nor smokes, looks too much like a banker to fit his role. Large of frame, dressed in a dark well-tailored suit with a substantial gold watch chain across his ample waistcoat, clean shaven, dark brown eyes shining out of rimless nose-glasses, baldish with graying temples. He appears on the platform to be safe and sane enough for anybody. A diamond ring flashes as he gestures, not with the thrust of a clenched fist, but with loose-handed waves. His voice lacks the resonance to stir deeply. He looks comfortable and successful, not like a man who has spent himself in a cause."² He is further described by the *Locomotive Engineers' Journal* as "a man of the Coolidge temperament" who would "look at labor problems from a Christian rather than a materialistic point of view."³

The rise of Green to the presidency of the Federation was undramatic. The son of a coal-mining family of east central Ohio, he left school at the age of sixteen, worked twenty years as a miner, rose to the district presidency of the United Mine Workers in 1906, served four years in the Ohio State Senate, and in 1913 became secretary-treasurer of the miners' union. A year later he became also third vice-president of the American Federation of Labor. The elevation of Green to the Federation's presidency in 1924 was largely due to the support of John L. Lewis, then president of the United Mine Workers.

Even before Green assumed control of the American Federation of Labor that organization had begun to decay. Gompers was old, the Federation's structure was becoming obsolete, and its executives were increasingly inadequate for the tasks that had been thrown upon them. But Gompers had a personal following, and his policy, even if mistaken, had yielded membership gains through the favorable war period.

William Green inherited the Federation at a most unhappy period. Lacking both the virtues and vices of Gompers, he sought to stop the membership decline by a mildness of attitude that would have shocked Gompers. "The trade union movement," said Green in a lecture at Harvard, "has been passing through that period when physical controversies and the tactics

² Raymond Clapper, "Labor's Chief—William Green," *Review of Reviews and World's Work*, 88, No. 5, November, 1933, 21.

³ February, 1925.

of force were most effective; it is now in a period when its leaders must seek the conference room and there, by exposition and demonstration, convince conferees of the justice and wisdom of its position."

In carrying out this policy, Green began frankly to court employers by establishing the respectability of the labor movement. He stressed the values of union-management co-operation and the preservation of "American ideals." "We live in a country," said Green, "where class distinction and class hatred have no place in the industrial life."⁴ He appeared before Rotary Clubs, Chambers of Commerce, the American Legion, and civic groups to contend that a new labor statesmanship was emerging. "Capital must yield in its hostility toward trade unions," he told the New York Chamber of Commerce in 1926, "and must sheathe its weapons of force and autocratic control. It must take the workers into its confidence and must welcome the stabilizing influences which collective bargaining brings to industry. It must avail itself of the services which the organizations of workers is prepared to give."⁵ He repudiated the British general strike of 1926 as a breach of an inviolable wage contract.

Although such assurances brought no immediate results in the form of an advancing union membership, he continued the appeal. In late 1929, he spoke on the Halsey Stuart radio hour on the subject, "The Worker and His Money." After expressing faith in the continuation of prosperity, he concluded: "Satisfy yourself that you are dealing with a strictly reliable firm in security purchasing."⁶ Prosperity did not, however, continue. At the close of 1929 he assured President Hoover that labor would launch no new organizing campaign for higher wages if industrialists respected their pledge not to cut wages.

The Southern textile campaign already in progress commanded his attention in early 1930. Southern textile workers had not shared widely in the prosperity of the twenties. The stretch-out system had brought resentment which led to a number of bitterly fought strikes, some of which were under the leadership of communist groups. In a "mission of peace and helpfulness," Green threw his influence behind the United Textile Workers, affiliated with the Federation. Repudiating communism, he declared: "The American Federation of Labor respects Capital. We believe in industry and we believe that Capital is as necessary and as essential to our national development as men and women. We believe that Capital has a right to organize. We believe that financial institutions should be built up." "It is our

⁴ Speech before Newark Chamber of Commerce, December 17, 1925. Reported by *Federated Press*, December 25, 1925.

⁵ *Labor*, November 27, 1926.

⁶ *Labor Age*, January, 1930, p. 13. (The firm for which he was speaking later became involved in litigation concerning its flotation of Insull securities.)

desire to help make more profits for the employer and at the same time have a just and equitable division of the profits among the workers.”⁷

Although his efforts at convincing Southern textile mill owners of the co-operative value of unionism did not bear fruit, Green continued, during the early years of the depression, to strike a conciliatory note. As an aid to recovery he proposed government planning, operated on a voluntary basis with labor participation, urged high wages, a share-the-work program, and a shortening of the work-day. He opposed, as did the National Association of Manufacturers, the adoption of compulsory unemployment insurance. Green was a member of the Gifford Committee on Unemployment Relief which, late in 1931, made a public appeal “to resume normal buying . . . upon the ground that it serves self-interest, patriotism, and humanitarianism, at once.”⁸

Other conventional attitudes of labor’s chief executive are revealed by his opposition to the dissemination of birth-control information by doctors (as proposed by the Gillett Bill in 1931) and by his stand on military affairs. In 1929 he endorsed the Citizens’ Military Training Camps and, speaking at West Point, said: “We believe that it is inconceivable that our country would ever engage in an aggressive war. We believe in an adequate national defense and in adequate preparedness against aggression or against attack.”⁹

In 1930 William Green received the gold medal of the Roosevelt Foundation for his policy of harmony between labor and capital. The citation read: “Symbolized and directed a new policy of co-operation in industry representing the American concept of individualism and self-reliance and fighting with success the disruptive influence of the radical element preaching Communism and class war.”¹⁰

Although the quotations above serve to give an idea of the attitude of the president of the American Federation of Labor during a critical period, they do not indicate what is possibly of greater importance—the degree of leadership afforded by Green in the affairs of the Federation. Gompers had at times made conciliatory speeches; yet he had built about him an organizing staff composed of men who, while not of unusual ability, at least looked to Gompers for ideas. William Green was not of the type to inspire personal loyalty of this type. In his hands, the Federation lost much of its remaining vigor as Green allowed the autonomous unions to go their several ways, did the day-to-day duties in the Washington headquarters of the Federation, edited the monthly magazine, made speeches, issued press releases, and occasionally appeared on behalf of the Federation’s legislative program. He

⁷ Quoted in R. W. Dunn and Jack Hardy, *Labor and Textiles*. International Publishers. New York. 1931. P. 191.

⁸ *Federated Press*, October 29, 1931.

⁹ *The New York Times*, May 29, 1929.

¹⁰ *Federated Press*, June 2, 1930.

did not win sturdy applause; neither did he win censure. His messages were consistently platitudinous. In contrast, Matthew Woll, the third vice-president, was often during the period popularly considered to be president of the Federation because his vituperations against the "Reds" and his defense of the tariff and of the proposed repeal of the Eighteenth Amendment possessed the vigor and force lacking in Green's utterances.

Between 1932 and 1935 Green's statements began to be marked by increasing militancy. During the campaign of 1932 he had played an exceedingly cautious role. Under his editorship *The American Federationist* called for the election of a "statesman" as chief executive but did not specify the political party in which that statesman might be found. Not until Franklin D. Roosevelt was safely elected with an overwhelmingly Democratic Congress did Green "unfurl the battle flags" of labor at the 1932 Cincinnati convention of the Federation. There he shocked labor and business groups alike with a ringing expression in which he denounced business leadership and called upon organized labor to use "forceful methods if need be" to secure the demands for the six-hour day, the five-day week, higher wages, and social security.

Left-wing commentators treated this outburst as a demagogic appeal which their pressure had at last evoked, but business was concerned. In February, 1933, William Green gave an authorized interview published in the *Nation's Business*, organ of the United States Chamber of Commerce, in which, by a series of arresting and unrelated clichés, he took much of the meaning out of his previous utterance. "I am certain," said Mr. Green, "that great newspapers fulminated and criticized and condemned because I spoke the minds of millions of Americans and the hopes of those same millions and the unyielding determination that is in them. I spoke their resentment against three years of unemployment. . . . The American trade-union movement has been patient. We gave Government every opportunity to produce a remedy. We gave management every opportunity to produce a remedy. We went into conference with employers at the request of the President when the depression, as it is so foolishly called by many, was yet young. We agreed to refrain from drastic action if employers would refrain from drastic action. We would not disturb wage rates if they would not. . . . American wage rates have, in all but a few lines, been destroyed. Worse than that, more than eleven million American breadwinners have no work, have had none for months and have no prospects of getting any. . . . Finally, after three years of suffering, we, the organized workers, declare to the world, 'Enough; we shall use our might to compel the plain remedies withheld by those whose misfeasance caused our woe.' . . . Our movement is and has been constructive. It is and has been loyal to our free institutions. . . . It is and will remain American to the core. . . . We shall fight with every legitimate weapon at

our command to restore the kind of America in which a man can have a chance in his own right. . . . America cannot be a nation of outcasts and remain America. . . . We shall not reveal our plans until we determine that the time is ripe. We are not planning to engage in a conflict for the sake of being beaten by the forces of greed. . . . For we shall soon be on the march. We may fail, . . . but we shall have fought. . . . We are out to end legalized robbery in the United States. . . . We do not want battle. We prefer peace. And if the great employing interests of the nation, the great financial barons who rule so much of industry—those who have authority—will sit with us tomorrow in a great national conference in which all shall be determined to agree upon that which is, in the common judgment, best for America, we will withdraw every utterance of militancy. We will command no mobilization, we will perfect no plans for combat. I can with authority and assurance say that for all labor. . . . I said that 'we shall fight, not with physical violence, but with our economic strength' and I said that 'so far as I am concerned, I shall arouse the fighting spirit of the men of labor.'" ¹¹

William Green heralded the coming of the N.R.A. as a boon to labor. Joining with President W. A. Harriman of the United States Chamber of Commerce, he proclaimed the establishment of a new relationship with capital and labor under governmental guidance. The inclusion of Section 7(a) in the recovery program lent force to the belief that the labor movement had ceased to be static. Official status was given to labor leaders in a way which resembled Wilson's wartime courtship of Gompers. Labor regretted, to be sure, the appointment of Miss Frances Perkins as Secretary of Labor, feeling that its own candidate should have been nominated. Still William Green's name and those of his principal lieutenants appeared on N.R.A. Advisory Councils and on numerous governing bodies established by Washington. While these men were, to be sure, on the fringe, they were given some recognition. This was what labor desired. With new locals springing up overnight and the whole country clamoring for organizers, William Green sounded a call to build the labor movement to twenty-five million members. Despite a number of tilts with General Johnson and with the President over the interpretation of the codes, William Green retained faith that all would come out to the benefit of labor. "The Administration," said he, "is anxious to develop industrial self-government. It accordingly wishes to turn over to particular code authorities the administration of their code, always provided that this particular industry will take steps to prove that it is well organized for industrial self-government." ¹²

The faith placed by Green and the other leaders in the operations of the

¹¹ Quoted in *The Journeyman Barber*, March, 1933, pp. 40-43.

¹² *American Federationist*, 1934, Vol. 41, Part 1, p. 283.

N.R.A. was scarcely justified. In fact, the union organizing campaign had largely come to a standstill by the time the Supreme Court eliminated the N.R.A. The energy which labor had spent in filing complaints, in attending hearings and seeking the codification of industry, and in backing the ambitions of President Roosevelt seemed in many cases largely wasted.

We have elsewhere described the events of this period. Here suffice it to say that William Green, as the spokesman of the American Federation of Labor, appeared satisfied with the fact that his organization had at last been recognized. His overwhelming task became that of conciliating the various elements in the labor movement which were at the time battling for new territorial gains. The craft versus industrial union problem had become menacing and the formation of new federal locals in new industries only postponed the time when it must be faced. The long-standing building trades quarrel continued. In the early summer of 1934 Green did effective work in arranging for co-operative action among the building trades unions, but by the fall of 1934 the conflict became even more heated. The outbreak of general strikes in Toledo, in Terre Haute, and in San Francisco brought him another sore problem. His long-expressed fear of radical domination of the union movement was responsible for his condemnation of any effort to liberalize union policy. Now the communists began to be increasingly troublesome. Ever since the inauguration of the N.R.A. they had pointed to it as a device for lowering wages and for solidifying the employers' dominant position in industry, but as long as they were organized in outside dual unions they were relatively ineffective. When the communists altered their policy in 1934 and sought admittance into A.F.L. unions, the Federation leaders began a renewed "Red hunt," and William Green ordered the expulsion of communists from labor ranks.

The most difficult battle in Green's career, however, centered in his relationships with his own organization, the United Mine Workers of America. It is a curious fact that while the miners have been traditionally militant, they have very often been led by men of an exceedingly conservative stamp. John Mitchell, William Green, during his secretaryship, and even John L. Lewis were of this type. But Lewis, who had pushed Green into the presidency of the American Federation of Labor, had changed by 1934. The reasons for this change are set forth elsewhere in this chapter. The clash which was rapidly developing between the industrial and craft union groups within the Federation appeared more and more inevitable. This Green sought to avert by compromise. The Executive Council was enlarged in 1934. A vague formula was adopted to allow industrial unions in "mass-production industries." But the problem remained unsolved. At the 1935 convention, Green expressed the dilemma which he faced: "In this convention I have found myself alternating between my devotion to that great union with which I

have been associated all my life and my love and respect and admiration for every union represented in this convention. I conceive it to be the duty of a leader of this great movement to render such service as may be possible in bringing about a solution of our internal problems, as well as to carry on the fight for economic and industrial advancement. I consider it my duty to put forth every effort possible to find a basis of solution, a basis of accommodation upon which our organized labor movement may stand. . . . The debate is over. The problems have been solved. A settlement has been made, and from this convention we must go out united, because the interests of those we represent demand that we shall do so.”¹³

The battle was not, however, over, despite John L. Lewis's closing remark to the convention that “the present President of the American Federation of Labor typifies all that is desirable in American citizenship and in the leadership of American labor.” Within two months Lewis and Green were at loggerheads over the C.I.O. Green's overtures for C.I.O. dissolution were couched in a most conciliatory tone. In fact, had he been left to himself, it is probable that he would not have forced the issue with Lewis and the C.I.O. Indeed, it is doubtful whether Green has the capacity to take a decisive stand alone. The sentiment that linked him with the United Mine Workers caused him to cast his votes for the industrial union camp in the crucial poll on industrial unions in the 1935 convention. He wanted peace, but as a legalist he implored the dissident unions to dissolve their dual creature, the C.I.O. or, failing that, to put their case before their brothers on the Executive Council.

No year in Green's life was so utterly disastrous as the 1936 year of defeat. The United Automobile Workers (which joined the C.I.O.) displaced his nominee from the leadership of the motor union. The C.I.O. scornfully outbid and outmaneuvered him in the steel industry by putting up real dollars and an actual organizing staff instead of the phantoms that Green was wont to create on those occasions. The radio workers defied him and were welcomed into the C.I.O. camp. To make matters worse the C.I.O. refused his invitation to trial. Pulled this way and that, Green finally yielded to the stronger elements in the Council and allowed it to expel the recalcitrants. When he appeared at the Tampa convention, political safety demanded that he accept membership in the Musicians' Union so that his re-election might be assured. His speech at that convention was, curiously, probably the best in his career. Dramatically he detailed the ingratitude of the newly organized unions and the unwillingness of the C.I.O. to meet with the A.F.L. officials, even after repeated invitations. “My friends,” he said, “I would do anything in the world to unite this movement. I have gotten on my knees. I

¹³ *Report of the Proceedings of the A.F.L. Convention, 1935*, pp. 698-99.

have silently suffered humiliation and insult, and I will suffer again if I can only unite this movement."

This appeal for unity was unavailing. The C.I.O. simply failed to take Green seriously. If they felt toward him less hostility than toward Woll, Frey, Tobin, and Hutcheson, it was only because they regarded Green as a puppet for the real leaders of the Federation. Even by 1937 Green failed to command the same respect from his opponents that other Federation leaders did. Although he played his part in sabotaging C.I.O. campaigns, he became noted for his aptitude for saying the wrong thing. The C.I.O. won its biggest victory in motors, for example, shortly after he had asked the General Motors Corporation to respect the rights of the crafts. In 1938 he was forced out of the United Mine Workers after he had been called before its executive committee to answer charges of having fostered a dual union, the Progressive Miners of America, which had been granted an A.F.L. charter.

Through 1938 and 1939 Green's public utterances became increasingly bitter and spiteful. Accepting without question the "Red baiting" campaign initiated by his lieutenants, he has recklessly charged communist domination of the C.I.O. His animosity has even extended to attacks upon the personnel of the National Labor Relations Board which he has accused of C.I.O. favoritism. His moves in the political field have been intended to place the Federation in opposition to progressive candidates who have received C.I.O. backing.

There is little ground for the belief that Green must take a major share in the responsibility for the division in the labor movement. The structure of the Federation was such that under any president the craft and industrial issue would sooner or later bring a decisive split. Compared with the other members of the Executive Council who might have been elected president of the Federation had he resigned, Green is a progressive. Indeed, the conflict might have been precipitated earlier had Federation policies been set by a more forceful figure.

JOHN L. LEWIS

The career of John L. Lewis has little of the consistency marking that of William Green. In a few brief years his C.I.O. has met with spectacular success. In 1940 he is considered a militant liberal, championing the cause of industrial unionism, but back of this record is the history of a forceful reactionary who, up to 1933, represented one of the most conservative influences in the Federation. As a conservative Lewis failed. His own union was all but wrecked by his policies. His high-handed methods embittered the miners. Even his support of the Republican party gained him little.

Viewing his past career, one is tempted to ask: Why did Lewis turn left? Is he sincere? What will he do next?

First a word as to his background. Lewis is the son of a Welsh coal miner who had migrated in 1875 to Australia and later to the United States. Born in Lucas, Iowa, in 1880, Lewis was one of a large family. His father, black-listed for union activity in the coal mines, was a Des Moines policeman during Lewis's adolescence but returned to the mines in 1897. Lewis began work in the mines in the same year after having finished seventh-grade work in school. He soon left to work in the metal mines of Colorado but returned to Lucas in 1907 when he married a local school teacher. His ascent in the rough and tumble of miners' politics was rapid. Moving in 1909 to Panama, Illinois, he stepped from local union president to pit committeeman and a year later became a lobbyist for the state organization. Pugnacity, stature, and speaking ability soon pressed him to the fore. "It was impossible to ignore him anywhere. Platforms trembled when he mounted them and he always timed his entrance like an actor, then executed it with the combined effect of active siege howitzers, the sound of massed bands, and the entrance of an emperor into his court."¹⁴

In 1911 Samuel Gompers appointed him field and legislative representative of the American Federation of Labor, a position which brought him into contact with a number of industries, notably steel and rubber. Unproved charges from radical opponents suggest that during his six years of service with the Federation he received financial support from the United States Steel Corporation and that his later climb in miners' politics is to be attributed in part to such assistance. Whatever foundation for the charges, Lewis's career was meteoric. In 1917 he returned to the United Mine Workers as chief statistician. A year later he became vice-president of the organization. In 1920 he was president, succeeding Frank J. Hayes, whose bibulous tendencies had proved his undoing.

During the period of his rise Lewis was an outspoken conservative. He opposed price and wage fixing in the mining industry during the War. In 1919 his handling of an involved mining dispute was scarcely impressive. Much to the miners' dissatisfaction he called off a national strike, justifying his action by the pressure exercised upon him by the government. He steam-rolled the settlement through the miners' convention by silencing or expelling the leaders of the opposition. Joining in the postwar "Red" scares, he denounced communists as visionaries and as menacing the country. From 1920 to 1933 he led the United Mine Workers through a most disastrous period. Indeed, by 1930 a once-powerful union was all but wrecked. Economic forces were no doubt largely responsible for this catastrophe, yet

¹⁴ Cecil Carnes, *John L. Lewis, Leader of Labor*. Robert Speller Publishing Corporation New York. 1936. P. 12.

the stubbornness with which Lewis carried through his policies would seem to have been an important contributing factor. The miners at the close of the World War were radical. They wanted nationalization of mines; they opposed the restriction upon wages which had been imposed by the fuel control board; they desired the extension of unionism into territories not yet organized; they were anxious to build an alliance with railroad workers and steel workers to strengthen the union movement. Lewis crushed such militancy. He pigeonholed the resolution to nationalize mines, ousted opposition leaders, often without cause, suspended entire districts accused of failing to follow the dictation of the national office, and signed agreements tinged with politics. Relationships between the powerful Illinois district and the national office had often been strained, but matters were allowed to become so serious that the Illinois district seceded in 1931. In the mutual recrimination that followed international organizers of the United Mine Workers became more involved in upholding the political fortunes of their leader than in the extension of the union.

The climax was perhaps reached in 1926, when, in the midst of one of the most bitter strikes during which miners were living on a pittance of four or five dollars a family, Lewis was voted an increase in annual salary from eight to twelve thousand dollars by a convention which he dominated and in which his progressive opponents were outvoted by highly doubtful methods. The campaign against dissident elements involved both the setting up of "blue-sky locals" in the Southern coal fields and the disfranchisement of locals not in agreement with the Lewis machine. In fact, any militants who survived to attend the biennial conventions were either not recognized by the chair or, if they secured the floor, got peremptory eviction by the strong-arm allies of Lewis. A "save-the-union committee" organized to oust Lewis from control sponsored a convention in Pittsburgh in April, 1928. In 1929, when the Illinois district led a move to capture the international organization through the formation of what proved to be an unconstitutional United Mine Workers' convention, a three-way battle developed among the two elements in the United Mine Workers and the National Miners' Union, which entered the field backed by more militant elements. In that year only 80,000 of the 386,000 bituminous miners remained in the United Mine Workers.¹⁵

In the anthracite fields the battle between John L. Lewis and opposition forces also resulted in expulsion and dualism. This field continued, however, to be unionized. It was Lewis's good fortune that the struggles in anthracite did not coincide with those in the bituminous field for he was thus able to use the funds provided by the "check-off" in anthracite to crush the revolt in the bituminous field.

¹⁵ Anna Rochester, *Labor and Coal*. International Publishers. New York. P. 213.

This checkered record leads one to wonder why Lewis today is regarded in some quarters as the standard-bearer of progressives in the labor movement. For example, how can American miners have implicit trust in this high-salaried executive still surrounded in his elaborate Washington headquarters with many of the lieutenants upon whom he relied to crush opposition in the 1920's? An explanation of this paradox is to be found in the numerous successes of the United Mine Workers in the years 1932-35 when Lewis succeeded in rebuilding his organization and in conciliating most of his old opponents, many of whom he added to his staff. Whereas the 1920's had brought constantly lowering wage standards to the miners, the early 1930's brought union organization in the face of almost insuperable obstacles. The first revolts in 1931 were not led by the United Mine Workers, which was largely discredited, but by the National Miners' Union. The United Mine Workers capitalized upon the walkouts and, with the aid of the Pennsylvania state government, started to rebuild their locals. Many operators reestablished relations with the United Mine Workers to escape the organizing drive of its more radical rival. The N.R.A. merely accelerated the reconstruction.

When President Franklin D. Roosevelt entered office, Lewis seized upon the advantages offered under Section 7(a), and proceeded rapidly to unionize. As we have noted before, areas which a union organizer had not dared enter some years earlier now received organizers with enthusiasm. Even Pennsylvania's Fayette County, dominated by the United States Steel Corporation and a nonunion area since the strike of 1922, became thoroughly unionized. Both Northern and Southern fields responded. By 1935 Lewis had consolidated the mine workers of the country into his union, save for those in eastern Kentucky, some Southern districts, and a part of the Illinois area. Such victories brought new blood into the United Mine Workers and made it the largest union in the American Federation of Labor. It again had a treasury. It secured representation on coal boards in Washington. Lewis's name appeared with Green's as a supporter of the New Deal, an endorsement which served to publicize his desertion of the Republican cause.¹⁶ The complete change that had come over the man was not the chance conversion of a leader to a new faith. Many factors in Lewis's environment were urging him on to champion militant industrial unionism.

The miners, for example, had long wished not only to build their own unions but also to develop strong labor allies in neighboring industrial areas so that the workers in the auto and the steel industries might be closely linked to the miners in dealing with companies which, in many cases, owned both mines and factories. For that reason, too, the miners had long

¹⁶ In 1928 Lewis supported Herbert Hoover while Vice-President Philip Murray of the United Mine Workers supported Alfred E. Smith.

championed the industrial type of organization, and Lewis was but their mouthpiece.

It was not, however, until 1935 that Lewis felt the time ripe for a decisive struggle with the old craft leaders. He had compromised with them in 1934 at San Francisco, where he secured the endorsement of the principle of industrial unions for mass-production workers but he was bitterly disappointed at the failure of the Federation to capitalize upon its organizing opportunities in the leading industrial centers. He considered Federation leadership moribund. It had allowed ambitious craft groups to disrupt promising federal unions and even the infant industrial unions launched in accordance with the San Francisco Declaration of 1934. In the extended debate at the 1935 Atlantic City convention, Lewis became field marshal for the industrial forces. His first move was to compel the resignation of Matthew Woll from the National Civic Federation, which had become a reactionary echo of its former self. His fight with William Hutcheson, czar of the carpenters' union, became more than a battle of words at the convention when Lewis floored his opponent by a right to the jaw.

More important than this dramatic fight was the solidification of the industrial union forces at the Atlantic City convention. Though outvoted, they were soon to gather under the banner of the C.I.O. Lewis resigned his vice-presidency of the Federation and with surprising rapidity secured the allegiance of many of the progressives whom he had peremptorily suspended for ninety-nine years from the United Mine Workers. Chief of these was John Brophy, former president of District 2 of the United Mine Workers, a philosophical Irishman who had had the audacity to run against Lewis for the miners' presidency in 1926. Lewis apparently realized that Brophy possessed certain qualities of stability which he himself lacked. In fact it was Lewis who had come belatedly to Brophy's progressive stand. Their alliance was significant to the members of the labor movement who had implicit trust in Brophy's honesty and judgment for it drew their full support to the C.I.O. Thus many progressives and not a few radicals came on the pay roll of the new organization as it went to battle in rubber, steel, motors, textiles, and other industries. With Brophy's aid Lewis captured most of the talented organizers of the country. Campaigns were soon featured by union songs, sound trucks, flying squadrons, and sit-down strikes. The C.I.O.'s leaders were willing to defy the strike breaking tactics of local magistrates and even to risk death in the Southern mill towns. Lewis himself remained the generalissimo, spurring on his troops through the radio and the press and conducting many of the knotty negotiations with the industrialists and with the White House. Through the whole period, Lewis continued to live in comparative affluence on his \$12,000 salary and generous expense account. He refused, however, to accept the increase to \$25,000 which the miners voted

him in 1936 but did take a platinum watch, the gift of West Virginia miners. In 1937, however, he did accept the increased remuneration.

The stout opposition of the American press actually strengthened Lewis's progressive tendencies, for he became a symbol of the new progressivism then being fostered by Roosevelt. The press accused Lewis of having presidential ambitions and of being a labor dictator. In working-class circles, these abusive statements served to rally millions to his banner. If Lewis and his United Mine Workers supported Roosevelt in 1936 the workers were for Roosevelt and for Lewis.

The Federation leadership was so snarled over the question of what to do about suspending international unions, state federations, city central bodies, and dissident locals that its problem became one of defense rather than one of offense. Lewis could not be called a radical because of his early Republican ties and his activities as a "Red baiter." As the C.I.O. pressed forward, Lewis seemed too nimble for the opposition. Perhaps his most effective statement was made at the time when the miners' union was suspended in 1936. "The only crime of which we are accused," he said, "is an attempt to organize workers and make them members of the American Federation of Labor. If that be treason, let Mr. Green make the most of it."¹⁷

Lewis was one of the first C.I.O. leaders to turn his back upon the prospect of reconciliation with the American Federation of Labor. Although willing to negotiate, he has not allowed the search for a formula that would bring peace in the labor ranks to interfere with the building of new industrial unions.

Looking at Lewis today, one finds it difficult to forecast his place in the labor movement. Liberals who, a few years ago, were prone to call him a "labor skate," "bureaucrat," and "sell-out artist," now herald him as "labor's champion." Curiously he has also won the applause of such men as General Hugh Johnson and Myron C. Taylor.

It is at least clear that Lewis, more than any other man of our time, has made a deep imprint upon unionism in America. To him must go much of the credit for employing his strategic position and oratorical skill to build for the first time substantial unions among mass production workers. Whether he has envisioned more than this first difficult step of harmonizing labors structure with current needs remains to be seen.

MATTHEW WOLL

Matthew Woll is representative of the extreme conservatives in the American Federation of Labor. A vigorous person in his fifties, he has long championed the craft union cause. Because of his prolific newspaper state-

¹⁷ Carnes, *op. cit.*, p. 291.

ments and writings, the public has often considered him the official spokesman for the American Federation of Labor, though his position has been that of third vice-president. Woll's interests have been broad, his activity great. Born in Luxemburg, he came to the United States at the age of eleven, where four years later he was apprenticed to the photoengraving trade. After four years at a college of law, he rose speedily in trade-union ranks to the presidency of the Photo Engravers' Union, a small, exclusive craft. For more than twenty years he was closely associated with Gompers. During the War he served on the War Labor Board and was chairman of the Committee on Labor of the Council of National Defence. Often derisively called "the crown prince," at Gompers's death he aspired unsuccessfully to the presidency of the American Federation of Labor.

Some idea of Woll's career may be gleaned from the varied organizations with which he has associated himself. Most important is the National Civic Federation of which Woll was the acting president in 1935. That organization joined representatives of labor, capital, and professional groups in proclaiming the mutuality of interest of capital and labor. At an earlier date the National Civic Federation's program had been comparatively progressive. It had sponsored collective bargaining and had taken some part in the public ownership and antitrust disputes of the Theodore Roosevelt period. The postwar Civic Federation was of a different character. Under the leadership of Matthew Woll and the aging Ralph Easley, it concentrated upon a campaign for "100 per cent Americanism." Radicals were to be tracked down and hounded out of the American labor movement. The continued nonrecognition of Soviet Russia and an embargo on Russian goods were other objectives. To Woll the problem was "to protect our industry temporarily from a country where for the moment all economic functions have been monopolized by a handful of sectarians who have seized the state and used it to abolish economic liberties, to repeal every economic right of the individual citizens, and to reduce the standard of living of their industrial wage earners and agriculturalists to a starvation level in order to accumulate in this way the capital to set up their sectarian society."¹⁸ Under pressure from Lewis, Woll severed his connection with the National Civic Federation in 1935. He has not, however, dropped his "Red hunt" or his demand for high tariffs. He is president of the American Wage Earners' Protective League, which has sought not only to prevent the dumping of foreign goods in American markets but to affiliate American labor organizations with employers' groups in building tariff walls for particular industries.¹⁹

Woll was also head of the International Labor News Service, which

¹⁸ *New York Herald Tribune*, November 9, 1930, p. 4.

¹⁹ *Federated Press*, Washington Bureau, January 24, 1930.

claims to be the news service for "loyal American labor." From the International Labor News Service conservative reports of the activities of the Federation and its affiliated unions are given to the numerous labor papers of the country, carrying for the most part the slant of Woll and of his associates. Woll also served as head of Labor's Loyal Legion against the Eighteenth Amendment. This campaign sought to rally the various unions toward repeal with the argument that employment would be expanded, prosperity regained, and an obnoxious law wiped from the books. It is interesting to note also that the versatile Mr. Woll is president of the Union Labor Life Insurance Company, a company primarily established to write life insurance policies for union members but which has since adopted high-pressure methods intended to induce businessmen to take out policies to secure the good graces of labor. Woll has, for a considerable period of years, served as chairman of the board of directors of the Workers' Education Bureau of America, an A.F.L. agency.

This by no means completes the list of Woll's interests and activities. He is chairman of the highly important Resolutions Committee of the Federation. He is vice-president of the Union Label Trades Department of the American Federation of Labor. Although he relinquished his presidency of the International Photo Engravers' Union of America to Edward J. Volz, his influence is still the dominant force in the union and he has continued as editor of *The American Photo-Engraver*, the organization's official paper. Typical editorials of the magazine in 1933 contained appeals to purchase American-made goods, condemnations of technocracy and other forms of radicalism, and strictures against unemployment insurance.

Writing in *The Nation's Business*, organ of the United States Chamber of Commerce, Woll spoke of his background. After mentioning that he had been born in the Old World, he added: "I look back on none of the traditions because I was brought into the American atmosphere as a child and my whole mental background is American. . . . My hopes are all against the growth of governmental powers. . . . Everything that has been bred into me by America and by the trade union movement of America objects to this development of bureaucratic power."²⁰ Though Matthew Woll's political fortunes within the Federation declined considerably in the New Deal period, he is still one of the most authoritative spokesmen of the conservative position within the Federation. In his recent book, *Labor, Industry and Government*, which outlines the program of American labor as conceived from this viewpoint, Woll sets forth the case for voluntarism, for "natural growth." He argues staunchly for labor-management co-operation, saying that it "has demonstrated its capacity to thrive in the face of the blighting effects of business adversity." He urges that labor be brought into full part-

²⁰ *The Nation's Business*, June, 1929, pp. 40 f.

nership in a democratically organized economic system. "Associations among employers, organization among workers, and co-operation between these two elemental forces in industry will render possible economies in production and distribution not obtainable in any other way." The book closes on this note: "American labor has been conservative in the insistence with which it has stood guard over the essential foundations of American liberty and American institutions." In the spring of 1938 General Motors sent each of its stockholders a statement by Woll condemning the National Labor Relations Board as an "autocratic usurpation of power" and urging repeal of undivided profits and capital gains taxes as "the greatest factor contributing to unemployment."

As the depression deepened, Woll's standing in American Federation of Labor circles declined. The more progressive forces were in favor of declaring for governmental action in the form of unemployment insurance, minimum wages, and other forms of social legislation that Woll had long opposed. His "Red-baiting" campaigns were still supported by the Federation but increasing joblessness made other fields of interest appear more important. When, however, the craft-industrial union issue came to the forefront, Woll once more was in his element. As chairman of the resolutions committee, he bulwarked the Federation's case against opening the doors to industrial unionism. In 1937 it was the ubiquitous Woll who emerged as a member of the joint peace conference of the Federation and the C.I.O., and it was he who issued the A.F.L.'s publicity release explaining the failure. At the 1938 A.F.L. Convention, Woll reported for the resolutions committee the belief that "business has learned the folly of its earlier ways" in opposing collective bargaining. He urged that the extension of state authority be curbed and asked that the Federation withhold even tacit encouragement of such measures as the federal licensing of corporations since the measure could be interpreted as a step in the direction of socialism.²¹ In 1940, Woll declared Labor's opposition to the extension of the President's reciprocal trade agreement program.

SIDNEY HILLMAN

No sketch of representative American labor leaders would be complete without including Sidney Hillman, President of the Amalgamated Clothing Workers of America since its formation in 1914. As a leader of a somewhat militant group of exploited urban workers, many of whom are foreign born, he early came into conflict with the American Federation of Labor. His organization, in fact, split off from the United Garment Workers of America, an A.F.L. affiliate, in protest against narrow traditional policies and bureau-

²¹ *Report of the Proceedings of the A.F.L. Convention, 1938*, p. 458.

cratic tendencies. Hillman's concept of the labor movement differs greatly from that of Green or Woll.

Born in Lithuania in 1887, Hillman came to America at the age of twenty. His background is that of a rebel. When thirteen, he was sent to a religious seminary at Kovno but he read Zola and Lassalle and by the age of fifteen his sympathies were with the revolutionary movement. In the Russian revolution of 1905 he was a member of the forces which took over the town of Zaber. Arrested three times in 1906, he was forced to flee the country, going first to England and later to Chicago. His first contact with the clothing trade was as an apprentice cutter with Hart, Schaffner and Marx in Chicago. He writes of his first job: "I worked two months without pay, as it was understood that I had savings enough to live if I did not get any other remuneration. I believe for about a couple of months I worked for \$6.00 or \$7.00 a week. During three years I worked up to \$11.00 or \$12.00. If the floor boss, as we called him, did not like a particular girl, or man, out they went."²² Forging to the front in the Chicago strike of 1910, Hillman became a power in the Chicago Joint Board of the clothing industry. In 1914, when the reactionary United Garment Workers of America leader sought to unseat the rebel delegates from the recently organized urban groups, the Amalgamated Clothing Workers of America was formed with Hillman as president.²³ Taking 40,000 of the 60,000 members of the United Garment Workers of America, the Amalgamated was able to extend its organization until it reached a total of 177,000 members in 1920.²⁴ American Federation of Labor officials upheld the United Garment Workers of America in the fight, but the Amalgamated secured the active affiliation of the bulk of the organized clothing workers.

In 1910, Hart, Schaffner and Marx had precipitated a strike of 40,000 workers by failing to settle a grievance in which sixteen women were involved. On January 14, 1911, the union signed an agreement which established satisfactory and rather novel machinery for the handling of disputes. An arbitration committee was formed, each side selecting one arbitrator and the two choosing a third. A complaint department received the cases to be placed before the arbitrators, but when complaints became too numerous a trade board was established on which two members of the union and two representatives of the employers investigated grievances and sought to settle them immediately without reference to the board of arbitration.

Hillman's revolutionary ideas of the earlier days gave way to a more

²² *Clothing Workers of Chicago 1910-1922*. Amalgamated Clothing Workers. Chicago. 1922. P. 23.

²³ Charles E. Zaretz, *The Amalgamated Clothing Workers of America*. Ancon Publishing Company. New York. 1934. P. 99.

²⁴ *Ibid.*, p. 297.

moderate approach under the pressure of day-to-day contacts with employers as a union official. Indeed, the history of Sidney Hillman is in a sense a history of Amalgamated Clothing Workers' leadership. The 1914 preamble to the Amalgamated constitution proclaims "a constant and increasing struggle" between the working class and the ruling class in which "the union is the natural weapon of offense and defense in the hands of the working class. The industrial and inter-industrial organization built upon the solid rock of clear knowledge and class consciousness will put the organized working class in actual control of the system of production, and the working class will then be ready to take possession of it."²⁵ Although the constitution of the Amalgamated has this Marxian base, in practice the union under Hillman's leadership has pursued policies which differ in essentials but little from those of more orthodox industrial unions. In fact, Hillman was able to fuse an outward radicalism with a practical business strategy that was sufficiently adapted to prevailing conditions in the trade to prevent the disaster which overwhelmed many less flexible labor organizations. Those friendly to Hillman hold that the long-run socialist objectives have not been forgotten by the Amalgamated but that he is really seeking to achieve these purposes by a day-to-day appraisal of the situation. He himself says in this connection: "The union cannot take the position of an outsider in relation to the industry; it must fight for a place in the councils of the industry, a place of power as well as responsibility. Having achieved that place, the union must proceed to utilize its new position."²⁶ Those hostile to Hillman hold that his radical phrases have been merely a blind used to keep a militant rank and file in line while he pursues a reactionary course of class collaboration. An anonymous biographer writes: "So completely has he submerged himself in the crowded life of the organization which he heads, that it is doubtful if many of his closest associates know very well their unofficial Hillman."²⁷ He has been idolized by liberals who have been impressed by the somewhat spectacular tactics of the Amalgamated Clothing Workers, tactics which mark a sharp break from the plodding efforts of the older unions. Hillman has possessed the ability to weld together many nationalities in a chaotic industry, to frame elaborate agreements with employers, and to introduce into unionism such novel features as unemployment insurance and plans for scientific management. He has shown enterprise in lending money to hard-pressed employers, and by his willingness to cut wage rates in critical situations. His organization has opened union banks, union apartment houses and other business enterprises. Amalgamated's sympathizers have watched with satisfaction while it made substantial contributions to other unions,

²⁵ *Ibid.*, pp. 103 f.

²⁶ *The World Tomorrow*, November 1929, p. 444.

²⁷ *Ibid.*, p. 443.

mostly to affiliates of the American Federation of Labor which had remained hostile until 1933. Although they have noted at times the gestures made by the Amalgamated toward a friendship with the Soviet Union, they point to Hillman's statement: "There is no patent medicine, right, left or center or any other kind. It takes men and women to build an organization, and not abstract theories. It takes warm hearts to maintain ideals, and not phraseology. . . . Conditions will arise, dictated by life, and not by the theories of a few dreamers, and it is much more important to have a proper policy than a great deal of noise." ²⁸

Since the election of President Roosevelt, Sidney Hillman has entered actively into co-operation with the federal government. The list of appointments he has received is most formidable. Secretary Frances Perkins made him a member of the Labor Advisory Board of the N.R.A. on June 20, 1933. In the same year he also became labor representative on the Men's Clothing Code Authority. In 1934 he assumed the post of Labor Advisor to the Division Administrator of the Textile Division, representative of the Labor Advisory Board on the Labor Policy Board and representative of the Labor Advisory Board on the Advisory Council. President Roosevelt on September 27, 1934, appointed him a member of the National Industrial Recovery Board. He was also a labor representative on the Cotton Garment Code Authority by appointment of the Labor Advisory Board. On August 1, 1935, he became a member of the National Youth Administration. He represented the Labor Advisory Board at numerous hearings and conferences which were held to establish code provisions, especially in relationship to labor policies.

In 1933 the Amalgamated Clothing Workers joined the A.F.L. and became a progressive force within the Federation. Hillman, however, entered enthusiastically into the C.I.O. at the time of its formation in 1935. His union gave generously to the C.I.O. campaigns. Not only did the Amalgamated Clothing workers under his leadership extend its own membership into new territories; Hillman himself assumed the chairmanship of the Textile Workers Organizing Committee which was charged with one of the most difficult tasks in labor organization, that of organizing textile mills throughout the country. The Amalgamated Clothing Workers were suspended by the Federation in 1936.

It is difficult to classify Hillman as a leader. He himself denies that the terms "conservative" and "radical" are of great value. He says:

Politics and strategy are only the means to the end, and the end is the realization of power to the movement. . . . Effective leadership will possess . . . mature, not amateurish, social idealism. Because of the complicated problems of American industry, greater skill is required to achieve constructive leadership here than in

²⁸ *Ibid.*, p. 446.

the trade union movement in the old world. Labor leadership here must be more than an exercise in promises. It cannot prove effective unless it is responsible for the promises it makes. . . . A realistic labor program, to start with, must be related to the facts of industry and to the needs of both the workers and the industry. . . . There has been a lot of loose talk in some quarters about class collaboration, a term which really means everything and nothing. It is an interesting fact that unions usually classed as solidly conservative have strictly adhered to the taboos of this scarecrow and have perished. After we in our organization have given a stubborn concern all the fight it wants and after we have brought them to recognize the status of labor in an orderly constitutionalized industry, we set our best heads to put the firm's productive strength in shape. For if they prosper, we may secure a share of that prosperity and if they don't, it is we that may have to close shop.²⁹

A. F. WHITNEY

A. F. Whitney, president of the Brotherhood of Railroad Trainmen, exemplifies the curious blend of staunch progressivism and traditional attitudes which has featured the American railroad unions.

Born in Iowa in 1873, Whitney was to experience both the moral influence of Methodism and the pioneer conditions of western Nebraska. His father was an itinerant teacher, farmer, and preacher. At sixteen, Whitney began to sell newspapers on railroad trains and, save for a brief interlude, has continued his close association with the railroad industry throughout his life. By the time he was twenty-one he was married and, as many other young Western men had done, had worked as brakeman on a number of Western railroads.

His rise in the trainmen's union, which he joined in 1896, was unspectacular. In 1901 his success in handling disputes brought him the chairmanship of the general grievance committee of the union for his railroad, the Chicago and Northwestern. In 1907 he was advanced to the position of vice-grand master (later called vice-president), a post which he occupied until his elevation to the presidency in 1928.

Whitney's union philosophy changed noticeably with the passage of time. In his earlier years he was a business unionist, stating in 1908 that "the organization of labor is a business proposition pure and simple." He joined the other officials of the union in portraying the mutual advantage for employer and employee from the increase of wages and the shortening of hours. By 1913 in the rough and tumble of labor politics Whitney had come to represent a middle position. President W. G. Lee of the union opposed pending workmen's compensation measures which Whitney felt should be passed. This issue led to a close contest for the presidency in which Whitney claimed that the incumbent won through falsifying the

²⁹ J. B. S. Hardman and Associates, *American Labor Dynamics*. Harcourt, Brace and Company. New York. 1928. Pp. 292-95.

election results. The continuation of this personal struggle in 1916 resulted in Whitney's demotion from his accustomed post of third vice-president to the newly created office of tenth vice-president. The coming of the World War and the legalizing of the eight-hour day through the Adamson Act quieted the differences between the two men, and in 1919 Whitney was restored to the third vice-presidency. In the postwar years he determinedly opposed the militant groups of railroad workers which were launching strikes in violation of signed contracts. Through the executive board of the Brotherhood, strikebreakers were furnished and charters canceled by the union to defeat those who wished to use the strike to force immediate wage readjustments because of skyrocketing prices. Militant leaders were arrested and, through the co-operation of the government, the union, and the railroads, unauthorized strikes were outlawed, especially in Chicago and on the West coast. There remained in Whitney, however, a tinge of progressivism and an ability to catch the imagination of the rank and file—qualities which were later to win him the presidency against Lee. In the meantime the latter had become a strong Republican and an ally of Matthew Woll of the A.F.L. He had sabotaged the campaign of the railroad brotherhoods supporting the Plumb plan of government ownership of railroads and had endorsed the wage cut ordered in 1921 by the Railway Labor Board. Moreover, the trainmen's union had allowed the railroads, aided by court injunctions, to break the 1922 shopmen's strike. During this period Whitney was by no means a strong opposition leader, although he did strongly condemn the use of labor injunctions. He barely survived attempts to oust him, and was in fact demoted to the seventh vice-presidency. In 1925, after he had backed La Follette in the election campaign of the previous year, Whitney was again defeated for the presidency by a small margin, but in 1928 he had gained sufficient strength to obtain the long-coveted office. Since his election he has continued to increase his following.

At the time of his election, Whitney's union was already feeling the effects of motor competition and improved techniques of railroading. The layoffs of trainmen were accelerated by the crash of 1929, but the union adapted itself to the new situation by strongly pressing its campaign for a six-hour day. It resolutely resisted wage cuts and attempted to limit the length of trains and to forestall consolidations that might result in drastic reductions of jobs. Its whole program concentrated about the militant fight for job security. The pious platitudes about the unity of interest between labor and capital slowly faded out of the union journal and were replaced by spirited condemnations of buccaneers, watered stock, and high-salaried and blundering railroad officials.

Between 1928 and 1932, however, the organization was in a most embarrassing position because President Hoover, at Whitney's request, had ap-

pointed William N. Doak, a vice-president of the union, as Secretary of Labor. In this capacity Doak disappointed his fellow unionists by opposing unqualifiedly their demand for the thirty-hour week and the Norris anti-injunction bill. In 1931 the organization reluctantly accepted a 10 per cent wage cut. In the presidential campaign that followed Whitney came out strongly for Roosevelt and apologized for his earlier support of Hoover.

No statement of the problems of the trainmen's leadership would be complete without reference to the heated jurisdictional disputes which became more acute during the depression. The principle of seniority is basic on the railroads. By the operation of this principle many men occupying the better positions were, due to retrenchments, forced back into lower classifications. Moreover, the railroads, in the interests of economy, tended to blur the lines which had earlier defined craft groups. Many conductors, for example, would act as trainmen. To complicate the situation, the switchmen's union, the conductors' union, and the trainmen's union had for a considerable time been competing for men in borderline occupations. This competition became more heated as the depression deepened. Moves for unity between the crafts proved unavailing although strongly supported by the rank and file of railroad workers. No formula could be evolved that would retain the "vested rights" of the union officers in their jobs and at the same time assure the smaller unions that the more numerous trainmen would not dominate the united organization.

Between 1932 and 1934 Whitney served as president of the Railway Labor Executives Association, which acted as the negotiating agent for the railroad unions. Friction within this organization increased as the jurisdictional strife continued unabated. In 1938 the Railroad Trainmen withdrew from all participation in the Association and undertook to conduct its own negotiations under Whitney's leadership.

The progressive trend in Whitney's philosophy became most noticeable after 1933, when his speeches came to be marked by his deep concern over widespread unemployment and his indignation over the callous attitude of employers. His first move was to support Roosevelt and the New Deal. When he observed the New Deal moving toward the right a year later, he turned toward the idea of a labor party and supported the League for Independent Political Action. This interlude was brief, for in 1936 he was again an ardent follower of the President. "The workers of the nation," he said, "who produce the wealth, are being urged to become 'rugged individualists,' by men who never in their lives made a dime as rugged individuals. The Morgans, the Rockefellers, the Bakers, and the barons of finance and industry generally, have risen to power and wealth, not through rugged individual efforts, but through the control of the credit machinery of the country and through the dictatorship exercised over the national Govern-

ment. . . . It is this unholy gang of freebooters that our noble President has fought and promises to continue to fight until we shall again be free. We love President Roosevelt for the enemies he has made." ³⁰

In 1936, he was given a diamond forty-year button by his union, which has come to reflect many of his progressive tendencies. His list of affiliations suggests the diversity of the forces which have marked his career. He is a Mason, an Elk, a Kentucky Colonel, a member of the Modern Woodmen of America, Grand Counselor of the Ladies' Auxiliary to the Brotherhood of Railway Trainmen, a member of the Presbyterian Church, an honorary member of the Veterans of Foreign Wars, and chairman of the Good Neighbor League of Northern Ohio.³¹

WILLIAM Z. FOSTER

The outstanding radical leader in the American labor movement, William Z. Foster, has been the center of a great deal of controversy. Officials of the American Federation of Labor have long regarded him as an agent commissioned by Moscow to bore from within their ranks. His friends hail him as an ardent working-class leader seeking to correct the misguided policies of the American labor movement.

Whatever the final verdict, Foster is undoubtedly a leader and has had a long record as a trade unionist. Born in Massachusetts in 1881, he was given slight educational opportunities. He worked at numerous jobs, finally becoming a railroad carman. His early socialism crystallized into an allegiance to the I.W.W. after the free speech fights on the West coast. Later a trip to Europe convinced him of the futility of the I.W.W. tactics of organizing a union movement, dual to the American Federation of Labor. "He saw that by withdrawal from the existing unions the militant or revolutionary radicals became isolated and, moreover, left the conservatives in uncontested control of the mass of organized workers."³² Failing to convert the I.W.W. leadership to his position, he founded in 1911 the International Educational League of North America. In 1916 he organized the International Trade Union Educational League. "The League had barely gotten under way when it occurred to him that the war prosperity precluded successful agitation. Conditions seemed to him to present an exceptional opportunity for demonstrating the possibility of effective organization work among the unorganized."³³ From 1917 to 1920 his efforts lost their previous

³⁰ Speech before legislative representatives of the Brotherhood of Railway Trainmen, August 24, 1936. Quoted in *Brotherhood of Railway Trainmen* by Walter F. McCaleb. Albert & Charles Boni. New York. 1936. Pp. 254-55.

³¹ *Ibid.*, p. 258.

³² David J. Saposs, *Left Wing Unionism*. International Publishers. New York. 1926. P. 48.

³³ *Ibid.*, p. 49.

revolutionary flavor. It was in 1917 that he joined John Fitzpatrick to organize packing-house workers; in 1918 and 1919 he conducted the nation-wide organization of the steel workers. Drawing together twenty-four unions with jurisdictional claims within the industry, the National Committee for Organizing Iron and Steel Workers held its first conference in Chicago on August 1, 1918. Foster's leadership in the steel strike of 1919 was exceptional. He was faced with the task of welding into one united effort men of differing nationalities and differing skills in an industry of such magnitude that the task seemed insuperable. The conservative demand for the right of collective bargaining, the eight-hour day, one day's rest in seven, and the abolition of the twenty-four-hour shift were rejected. The steel companies preferred to treat the outbreak as of "Bolshevik origin." The press, the police, and many of the federal government agencies joined in crushing the strike. Foster emerged from the unsuccessful conflict with his reputation enhanced but with bitterness toward many A.F.L. unions for their lack of support. "Often the national committee had to beg for weeks to have a man sent in to organize a local union, the members for which it had already enrolled. Hundreds of local unions suffered and many a one perished outright for want of attention. Whole districts had to be neglected, with serious consequences when the strike came."³⁴ Organizers were not well handled by the affiliated units, and the miners and railwaymen did not act in concert with the strikers. Gompers and the presidents of the affiliated unions, however, backed Foster during the campaign.³⁵

From the steel strike Foster drew a lesson which strengthened his earlier point of view. He realized anew that the familiar mottoes of the labor movement, such as "a fair day's pay for a fair day's work" and "the interests of capital and labor are identical," are but camouflage intended "to pacify and disarm the opposition."³⁶ In practice such slogans are virtually ignored. Trade-union movements are blind to their own goals, which are not capitalistic but really revolutionary.³⁷ The labor movement cannot be judged by its preambles and manifestos. "The trade unions are making straight for the abolition of capitalism and . . . they are going incomparably faster toward this goal than any of the much advertised so-called revolutionary unions in spite of the latter's glittering preambles."³⁸

Following a trip to Russia in 1921 Foster returned to join the Communist party and to become its 1924 candidate for the presidency of the United States.

³⁴ William Z. Foster, *The Great Steel Strike and Its Lessons*. B. W. Huebsch. New York. 1920. P. 237.

³⁵ *Ibid.*, pp. 249. The Amalgamated Association of Iron, Steel, and Tin Workers is especially criticized for its failure to act in unison with the other organizations and for its withdrawal immediately following the strike.

³⁶ *Ibid.*, p. 258.

³⁷ *Ibid.*, pp. 258 f.

³⁸ *Ibid.*, p. 262.

The Trade Union Educational League which he organized in 1921 continued his program of "boring from within." Success in this endeavor was, however, not noteworthy, the slight gains made being limited to the garment trades and to mining. Nevertheless, when in 1927 Foster wrote *Misleaders of Labor*, he was able to give damaging evidence that the A.F.L. bureaucracy appeared even more strongly entrenched than it had been in 1921. It had, in fact, lost most of its remaining militancy, the unions maintaining their conservative front despite progressive opposition. Many Trade Union Educational League members had been expelled for their beliefs. Yet Foster continued optimistic in a somewhat remarkable bit of prophecy:

The A.F. of L. and big independent unions are not hopeless, despite their reactionary leadership and conservative practices. . . . They contain hundreds of thousands of real proletarians and in many instances, as in mining, railroading, etc., they offer effective means, given the proper driving force from left wing and progressives, for the organization of great masses of workers and the protection of their interests. It would be a basic error in strategy, comparable to the dualism of the I.W.W., to ignore these facts and to reject the existing trade unions altogether. Besides, it must not be overlooked that, with the close of the present era of industrial activity and the precipitation of the inevitable industrial crisis, the trade unions, under the pressure of capitalists' attacks, will despite the reactionary bureaucracy veer sharply to the left, slough off many of their conservative aspects, and tend to become very much more proletarian fighting organizations.³⁹

To attain these ends Foster suggested the union of his organization with progressives to form a labor party which would fight against American imperialism, for recognition of the Soviet Union, for the amalgamation of unions, and for the organization of the unorganized (with special emphasis upon the semiskilled and unskilled workers). Democracy in trade-unions was also sponsored. Union-management co-operation was sharply condemned.

Foster's ideas were sharply modified in 1927 in accordance with a change in communist policy. Following numerous expulsions of radical members from A.F.L. unions, the party decided to form independent unions in a number of fields which were to be federated into the Trade Union Unity League. This organization existed for only six militant but harried years, reaching its peak of 125,000 members in 1934.⁴⁰ Its most effective organizing work was carried on in the fur, textile, and coal industries and among the unemployed. A number of national industrial unions were chartered. Perhaps the best analysis of the achievements and shortcomings of this effort is given by Foster himself: "Their militant strikes not only placed a serious hindrance in the way of wage cutters but also served as a powerful stimulus to the huge

³⁹ Foster, W. Z., *Misleaders of Labor*. Trade Union Educational League. Chicago. 1927. P. 319.

⁴⁰ W. Z. Foster, *From Bryan to Stalin*. International Publishers. New York. 1937. P. 278.

labor battles soon to occur under the New Deal. And when the big strike struggles developed in 1933-34 the T.U.U.L. was a real factor in furthering the organization and militancy of the workers." ⁴¹

At the same time there was, Foster says, shortcomings which included, especially in the earlier period, a tendency "to develop its union programs upon a too advanced revolutionary basis," ⁴² an inclination to neglect work within the A.F.L. unions, with the result that "the leadership of the industrial union movement in the A.F.L., traditionally led by the left wing, passed over automatically to John L. Lewis when he began his agitation for industrial unionism." ⁴³

A change in policy in March, 1935, brought the liquidation of the T.U.U.L. after its constituent unions had largely been transferred to the A.F.L. ⁴⁴ In the mass strike upheavals of 1935, 1936, and 1937, the militancy of workers was to reach a new high level. Considerable dispute exists as to the part played by Foster and the T.U.U.L. It is, however, certain that communists were active in the San Francisco general strike and played important roles in textiles and motors.

For Foster the T.U.U.L. liquidation marked the end of twenty-three years as secretary of boring-from-within movements. It is the present policy of Foster and his communist colleagues to support the C.I.O. in its program for labor unity and to press for the remodeling of the whole A.F.L. structure upon an industrial base, the building of a Farmer-Labor party, and the strengthening of organizations of the unemployed. The new tactic is aimed "to establish the maximum possibility for building the Communists and their program into the very sinew and fibre of the trade union movement." ⁴⁵

It is Foster's belief that, with the sharpening of the class struggle, communists will play an increasingly important part in American trade-union policy.

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⁴¹ *Ibid.*, p. 277.

⁴² *Ibid.*, p. 278.

⁴³ *Ibid.*, p. 280.

⁴⁴ *Ibid.*, p. 274.

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QUESTIONS

1. Which of the labor leaders described in Chapter 17 appear to be pursuing the policies laid down by Samuel Gompers?
2. How does one account for the conservatism of labor leaders in most of their actions?
3. Compare William Green and John L. Lewis from the point of view of background, political beliefs, and social outlook. Do you feel that Lewis's change of faith was accidental or the result of the pressures which surrounded him?
4. Does Matthew Woll belong in the labor movement? Would a man of his type be elected, say, to the presidency of the rubber workers' union or of the clothing workers' union?
5. Does the career of A. F. Whitney throw any light upon the failure of many railway unions to affiliate with either the A.F.L. or the C.I.O.? Does Whitney's career have anything in common with that of John L. Lewis?
6. Compare Sidney Hillman and William Z. Foster as labor leaders.

WHAT IS COLLECTIVE BARGAINING?

COLLECTIVE bargaining is basic in American trade-union practice. By collective bargaining we mean negotiation between representatives of management and of organized workers, concerning wages, hours, working conditions, dismissals, and so on. Such bargaining may result in either an informal or a written agreement. It generally implies that the employer "recognizes" the union; that is, that he will continue to treat it as the responsible negotiating agent for all or a part of his workers.

The terms agreed upon through collective bargaining are commonly incorporated in *trade agreements*. Some trade agreements are elaborate documents in which are incorporated the exact scales to be paid all types of labor as well as methods of enforcement and plans for renewal.¹ Others, especially in cases where the union is weak, are quite informal in character; the employer may merely assent to certain suggestions of the union's committee or may post mutually approved changes on the bulletin board.

In practice numerous questions have arisen over the precise meaning of collective bargaining. Is genuine collective bargaining practiced if union representatives are allowed to discuss wage questions informally though the management has no serious intention of entering into an agreement? Are the requirements of collective bargaining satisfied if management receives de-

¹ An illustration of an elaborate trade agreement is given below.

mands from the union, rejects them categorically, and takes no steps to make counter-proposals? Can genuine collective bargaining be said to exist where the workers are organized into company-dominated unions?

In a series of decisions the National Labor Board and the two National Labor Relations Boards have made clear their opinion that genuine collective bargaining involves the employer's recognition of the majority choice of the workers as a bargaining agent; it also implies that both sides must enter conferences with a sincere desire to arrive at an amicable understanding as to wages, hours, and terms of employment. This formula is by no means as simple as it sounds, for many difficult questions remain, such as the appropriate unit for bargaining, the determination of the majority representative, and the treatment of minority groups.

THE REQUIREMENTS OF COLLECTIVE BARGAINING

Three factors appear to be essential to effective collective bargaining. They have been well stated by Saposs as follows:²

1. *The right to organize:*

The workers must be granted the right to form and belong to self-organized, self-directed, and self-financed labor organizations.

2. *Union recognition:*

The workers must be granted the right to select and designate their own representatives who are to be their leaders and their spokesmen in all their relationships with employers, in the negotiations of terms of employment and in the application and fulfillment of those terms.

In other words, the employer recognizes the union as the collective bargaining agency through which the workers are to bargain with him in the determination of conditions of employment and to co-operate with him in their future application.

An important factor in the selection by employees of their own representatives from whatever source they see fit is that they can thereby develop bargaining specialists who will at least approximate the bargaining skill of the trained bargaining representatives of employers. The worker at the machine or bench may be exceedingly proficient in the performance of his particular task or trade, but he is, either by temperament or lack of experience, an unqualified bargainer. Moreover, being dependent upon a particular employer for his job, he might be induced by fear or pressure to let down in his demands; or sacrifice the interests of his constituents in other ways.

3. *Written trade agreements:*

The understanding arrived at in the course of bargaining negotiations between the representatives of employers and employees is customarily embodied in a written trade agreement. The basic conditions of employment, with detailed stipu-

² David J. Saposs, *Written Agreements in Collective Bargaining*. Research Memorandum No. 2. National Labor Relations Board. April, 1938.

lations of wages, hours, and a variety of miscellaneous but vitally important conditions, are frequently so comprehensive and . . . technical that their careful and skillful recording is imperative. Add to these complicated subjects the need for creating machinery for administering, interpreting and renewing the agreement and it becomes evident that the terms of understanding must be written in order to reduce to a minimum misunderstanding and friction. It has therefore been taken for granted by employers, unions, students of labor relations and others, that a written trade agreement is the usual form in which the results of collective bargaining negotiations are recorded.³

Characteristic of the difficulties which may be encountered in attempting to establish these procedures and of the practices of antagonistic employers is the case of the Colt's Patent Fire Arms Manufacturing Company of Hartford, Connecticut. The Colt Company normally employs fourteen hundred men whose work falls in four divisions: (1) the arms division, (2) the washing machine division, (3) the electric division, and (4) the plastics division. In the fall of 1933 three unions were organized in the plants of the company and made demands upon the company. No reply was received.

In late November or early December, after these first startings of organization had gotten under way, the company called in certain employees in the plant, requested them to sound out the workers on the desirability of putting into effect an employee-representation plan. There is evidence also that a group of women employees in the plastics division petitioned the company for such a plan. On December 4, 1933, apparently without further warning, the company circulated in the plant a ballot stating that "a number of our employees have suggested an employees' organization" and expressing the desire of the management to obtain "a vote of all employees, except officers, as to which of two methods of representation they wish to adopt—whether they wished to be represented through committees elected by a Colt Employees' Organization or through "an outside Labor Organization of my own selection." A ballot committee apparently selected by the management was listed on the ballot as being in charge of the election.⁴

On December 7, 1933, the company professed to be satisfied that "a large majority . . . expressed preference for company organization." On December 20, 1933, it announced plans for a joint committee of twenty-eight members, one for each fifty employees, a majority being necessary for election to the committee. The employees apparently were dissatisfied with the operations of the Colt Employees' Association and in February, 1934, voted 813 to 151 to disband. By April union organization was again being aggressively pressed, a joint council being formed at that time. When this council held a conference with the president, he refused to deal with the committee as an organization or negotiate an agreement, adding: "I regard [the members of the committee]

³ A fourth factor might be added, namely, that the most successful and effective collective bargaining occurs when the workers are functioning through a strong union. [Mr. Sapos' footnote.]

⁴ Decisions of National Labor Relations Board, Vol. 2, p. 155, Feb. 21, 1935.

as employees representing other employees. I will make no agreement with the committee and will regard the committee as a group to discuss matters, and the same treatment given this committee will be given to any group or individual person. . . . It is immaterial to me whether the committee represents the majority or not. I recognize this committee to discuss the affairs of the people they represent. . . . I do not recognize the union."

Most of the demands of the union the company president flatly rejected. One or two minor matters he regarded as already practiced by the company. Such concessions as were made came as a result of posting notices on the bulletin board or from direct communication with employees and not from any informal or signed agreement with the committee. The union offered to arbitrate, but the company declined. During the summer of 1934 further negotiations ensued, the company holding its ground and categorically declining to enter into any agreements.

We would meet with them, discuss the subjects, take them under consideration or reach conclusions, [as] circumstances justify. After each of these meetings we have said to them we would take under advisement various recommendations and demands submitted, but it must be understood that if a favorable decision was reached, that we would make it on behalf of all our employees, and we would announce it to them.

The National Labor Relations Board, in passing on the case, held that the company's dealing with the joint council "did not meet the requirements of collective bargaining."

The obligation of an employer under Section 7(a) is to negotiate in good faith with the representatives of his employees; to match their proposals, if unacceptable, with counter proposals; to make every reasonable effort to reach an agreement. The statute "requires employers to go further than merely to receive the duly constituted representatives of their employees, to give ear to their demands, and to assent to such demands if they are satisfactory." It contemplates that the terms and conditions of employment, when acceptable to both sides, shall upon request of the employees be embodied in a collective agreement, such an agreement to "bind both parties for a certain period of time."

In condemnation of the Colt Company the Board held as follows:

It meets with the joint council and talks with the members about terms of employment. But it steadfastly refuses to come to an agreement of any kind. When it finds the union proposal unacceptable it does not suggest a counter proposal; it merely raises objections to the union's proposal. When it finds the union proposal acceptable it does not give its answer direct to the bargaining committee. It takes the proposition "under consideration"; then, having determined to meet the proposal in whole or in part, it ignores the bargaining committee and announces its concession directly to all employees at the same time. Being unwilling to reach any

agreement, the company of course is unwilling to enter into an agreement covering a definite period of time, or one reduced to writing. This procedure is not collective bargaining. It is merely the presentation and receipt of a collective demand.

The Board ruled that the Colt Company should recognize the joint union committee as the agent of the majority of employees and should bargain collectively.

The three unions have sought to obtain their legal rights without resort to the economic pressure of a strike for nearly a year. The company's long continuing denial of those rights has to some extent impaired the morale and damaged the prestige of the union organization. The board is of the opinion that in restitution the company must show its good faith by wholeheartedly accepting the procedure of collective bargaining immediately recognizing the joint council as the exclusive collective bargaining agency of all its employees, and sincerely attempting to negotiate with the joint council written agreements signed by both parties, setting the terms and conditions of employment for a definite period of time.

This same issue as to the meaning of collective bargaining repeatedly comes to the fore. One other case of a rather different sort illustrates the attitude taken in a head-on conflict between a company union and a trade-union. The case chosen is that of the Sampson Tire and Rubber Company of Los Angeles, California, a subsidiary of the United States Rubber Company.⁵ In this instance a battle developed between the United Rubber Workers' federal union 19,747 and a factory council. When the case is stripped of its many details the essential facts are these: The plant was employing some 707 people in its mechanical departments. Of these at least 375 had signed an authorization giving power of attorney to an agent of the union so that he might represent them in collective bargaining. The union requested that an election be conducted by the National Labor Relations Board, but the Board decided that no election was necessary since the union already represented a majority of the employees. Nevertheless, the company refused to recognize the union. In April, 1933, it had suggested that its employees form a factory council with one representative for each seventy-five employees but with no individual memberships or dues payments. In June of the same year a large majority voted in favor of this company union plan. A year later sentiment had apparently changed, for the trade-union then claimed from five to six hundred members in good standing. The company, however, repeatedly stated that it would not recognize the trade-union as the exclusive bargaining agent of its employees. It agreed to bargain "with the factory council or with any other groups or individuals who present themselves." Pursuing this policy, the company considered the grievances raised by the factory council but did not

⁵ *Reports of the National Labor Relations Board*, II, 499, Case 243, Decision May 15, 1935.

negotiate a comprehensive collective bargaining plan with it. The council was, nevertheless, considered "a proper agency with which to conclude agreements of plant-wide effect," including such items as vacations with pay, changes in pay, and the terms of a system of group insurance. The National Labor Relations Board held that these were principally matters which the union, as the sole representative of the employees in collective bargaining, was alone entitled to settle with the company. In November, 1934, the union proposed a three-point agreement: first, that it be recognized as an exclusive bargaining agency; second, that an advance of 25 per cent be given in wages; and, third, that a work agreement be jointly drafted. These demands the company refused but submitted no counterproposal.

In its decision the Labor Relations Board concluded that the union should have been recognized as the exclusive collective bargaining agency for all the employees in the mechanical departments and that the company had acted contrary to law and to the desires of the majority of its employees by negotiating on certain issues with the factory council while refusing to sign a trade agreement with the union.

IS COLLECTIVE BARGAINING DESIRABLE?

In the argument over collective bargaining three positions are discernible: (1) that individual bargaining is preferable to collective bargaining of any sort; (2) that collective bargaining is desirable but that it should be conducted through employee-representation plans; and (3) that collective bargaining is desirable and should be negotiated through trade-unions. Although the full discussion of employee-representation plans is deferred to another chapter,⁶ it may be well to summarize here the arguments in favor of each of these three positions, much as they are put by proponents. The case for individual bargaining may first be stated.

(1) Under individual bargaining each worker stands squarely upon his own feet. If he has ability he may forge ahead. He is not subject to the leveling influence of the union. He puts his own price upon his services. The employer likewise values them. If a satisfactory bargain can be struck, the worker is employed. If not, the worker and the employer have the right to make other arrangements in an open employment market.

(2) Individual bargaining is in accord with the competitive economic system. Given free competition, wages tend in the long run to approximate the "marginal productivity of labor." The effect of unionism is to interfere with such free competition by advancing the wages of a particular group above their "natural" level, thus raising costs. These higher costs tend to be reflected in advanced sales prices and, through diminished sales, in increased unemployment.

(3) More employees are employed on an individual bargaining basis than on

⁶ See Book IV, Chapter 26.

any other. That collective bargaining has not become predominant suggests that management is generally willing to deal fairly with employees on the individual basis. Workers receive a full pay envelope without losses or deductions through strikes or through payments of organizational dues.

The case for individual bargaining is not impressive. About it clings the aroma of the nineteenth-century doctrines of natural rights and free competition. The drastic changes in employment relations necessitated by the rise of large-scale production are unrecognized, and traditional patterns are accepted as just. Many cogent objections come readily to mind. (1) No channel is provided by independent bargaining through which the individual worker is enabled to discuss his grievances with management without fear of reprisal from his immediate superior. (2) The argument for individual bargaining relies upon the assumption that wages are fixed by bargaining agents of equal strength, an assumption which fails to fit the present-day facts. Most workers have no idea of their worth to an employer. Furthermore, they are not skilled in stating their case. In the best of times a job is an important item to an individual with a family to support. Even assuming that the worker is as good a bargainer as the employer, it still remains true that the employer can afford to wait, since there are usually other workers who can be hired, while the worker cannot. Because so few workers are indispensable, a shrewd employer may—especially in a depression—name, within limits, the price which will be paid. The worker is likely, under individual bargaining, to take this as the best he can obtain. His excellence as a machinist does not qualify him to conduct negotiations with a trained employment manager. (3) The spheres in which individual bargaining is still in operation are among the most unhealthy in American industry. There low wages and excessive hours generally prevail, working conditions are unsatisfactory, and no channel exists for the settling of grievances. The worker may be pressed beyond endurance without having recourse to an organization which is able to register an effective protest. (4) Individual bargaining has often been maintained through the use of force. Reactionary employers have used strikebreakers, strong-arm men, tear gas, in fact, all of the modern instruments of industrial warfare in an attempt to prevent the formation and successful operation of collective bargaining agencies.

The weaknesses of individual bargaining have perhaps best been set forth in the preamble to the Federal Anti-Injunction law of March 23, 1932. The act says:

... under prevailing economic conditions ... the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his

fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.⁷

Up to the time of the 1937 Supreme Court decision which abolished company support of employee-representation plans, a heated battle was waged between proponents of trade-unionism and company unionism. Both groups held that the conditions of modern industry have rendered individual bargaining increasingly obsolete; they differed sharply as to the channel through which collective bargaining should operate. The American Iron and Steel Institute, the trade association of the steel industry, has well stated the case for employee representation in contrast to trade-unionism:

(1) The employee-representation plan builds harmony, confidence and understanding between employer and employee and gives workmen a means of collective bargaining which will permit them to present their case directly, and which will work for the mutual benefit of both workers and management.

By contrast, "union labor" appears to have been built upon the theory that the interests of capital and labor are inevitably antagonistic—that there must be, in the nature of things, a perpetual conflict between employer and employees. This accentuates class differences, promotes bitterness and hostility, fosters suspicion and friction, and drives a wedge between men and management. It is productive of no profit to anyone concerned, unless it be to the many racketeers who have fastened themselves onto the unions, and utterly contrary to the spirit of co-operation which is the keynote of the "New Deal."

(2) Under the employee-representation plan, employees are as a rule represented by men whom they know personally by years of intimate contact, although they have the right to choose anyone they please. These men are naturally thoroughly familiar with local conditions. They know what they are talking about from personal experience.

Under the regime of "union labor," employees are represented by union officials, often men of little plant experience and no business training, who have no constant, direct or immediate contact with the employees and their problems, and appear to be interested chiefly in collecting dues, on which they are dependent for their salaries and expenses. . . . These "union labor" leaders must naturally appear to do something which justifies their existence. They do this by constantly creating dissatisfaction with existing employment conditions, regardless of what they may be; causing strikes, strife and disorganization. Without regard to possibilities of fulfillment, they often make promises as to wages, hours and working conditions simply to maintain their following among the men, well knowing that the results which they

⁷ Public—No. 65—72d Congress.

promise are absolutely impossible of attainment. By destroying harmony, fomenting trouble and undermining confidence, "organized labor" in the long run frequently defeats the best interests of the employees themselves.

(3) The employee-representation plan provides for day-to-day action. Issues which arise may be discussed and settled immediately over the table by conference between employees' representatives and management, and thus disposed of before they have a chance to rankle in the minds of men.

The unions are not inclined to make allowance for variations in conditions between different plants, or between different cities. If an unfair condition occurs in one plant, the workers in twenty other plants may be called out on strike regardless of the fact that the workers in these twenty plants are being treated with all fairness. This brings strife and discord into a large number of plants where it has not existed before—causes unemployment, suffering and discontent—all because of a situation which may perhaps have arisen in one single comparatively unimportant mill. The part jurisdictional disputes have played in the history of the American Federation of Labor has done much to discredit national unionism in the minds of the public as well as employers.

(4) Under the employee-representation plan, not only are employees represented by men whom they elect, but any employee has the right to raise his individual case at any time.

Under "union labor," an individual employee is prevented from taking his case before his employer. He has no rights as an individual. He is not even allowed to make his own bargain with his employer as an individual, if he prefers to do so.

(5) Under the employee-representation plan, an employee may belong to the plan or not, as he chooses. He may, if he prefers, belong to a "labor union."

Under "union labor," no such free choice is permitted. The union demands a closed-shop. A man must belong to the union or lose his job. If he is dropped from the union for any reason, such as non-payment of dues, he not only is forced to leave his job, but is prevented from securing any other job in a union shop. This is a denial of the fundamental right of contract.

(6) The employee-representation plan gives free play to individualism, encourages the use of the incentive system, permits recognition of superior ability, and offers employees opportunity for advancement based upon capacity for leadership, proven intelligence, production efficiency, and the like.

"Union labor" desires to bring all employees to the same level, independent of ability, energy or initiative. It inevitably discriminates against superior workmen. It demands that promotion be made on the basis of seniority instead of upon the basis of reliability, originality or merit. "Union labor" deliberately strives to prevent men from broadening their experience or increasing their usefulness. It allows no man to do any form of work except that which falls under his own particular trade classification, and establishes iron-clad barriers between activities of allied crafts. This system presents almost insurmountable difficulties, both in production programs and

in expenses involved, and epitomizes the unprogressive and narrow-minded attitude of the leaders of "union labor" with respect to the advancement of the very men whom they presume to represent.

(7) Under the employee-representation plan no large expenses are involved entailing high dues.

The essential qualification for membership in "union labor" is payment of dues. . . . Membership is based not upon intelligence, efficiency, productivity, adaptability, or loyalty to the mutual undertaking in which employee and employer are engaged—simply payment of dues.⁸

Proponents of trade-unionism hold these strictures to be most unsound. Unionists, for example, do not contend that the interests of capital and labor are at all points antagonistic. They merely hold that a contest exists over the distribution of the product once it is produced. Both the workers and management may have a common aim in seeking more production, but an issue arises when both groups demand a larger share in its distribution. If the employee organization is strong and independent of employer domination (a trade-union, for example), it can confer with the employer on equal terms. If it is dependent upon the employer (an employee-representation plan, for example) it cannot bargain; it merely acquiesces in his decision. The unionist also insists that union officials are compelled by the nature of their work to possess a broad knowledge of the industry in which members are employed. Furthermore he states that, even if a particular union representative is not employed in a given factory, he is scarcely to be considered an outsider. His skill is that of a negotiator. He knows the conditions in other plants. He is aware of the classification of jobs. He can gauge the strength of his organization and can appreciate its legal rights. In negotiations he is a counsel for the union. Employers have long found it desirable to hire specialists for personnel as well as legal work. Since "outsiders" frequently act as spokesmen of the company, why are not unions entitled to have their independent experts?

One frequent complaint of employers is that unions have dues. To this one acute observer of the American labor movement⁹ has replied by suggesting that the essential characteristics of any movement are an independent treasury, an independent executive body, and independent propaganda, usually in the nature of publications. A women's suffrage association, a birth-control league, a manufacturer's association, or a trade-union will by these tests partake of the nature of a movement. In the case of the employee-representation plan, what propaganda literature there is is printed by the employer. Except for limited social and beneficial purposes, treasuries do not exist. It has tended to be an artificial creature, established by employers

⁸ *Collective Bargaining in the Steel Industry*, American Iron and Steel Institute, New York, N. Y., June, 1934, pp. 7-12.

⁹ David J. Saposs.

to serve as a "lightning rod" which will direct the interests of workers along channels he can easily dominate.

Employers frequently claim that unions are not honestly conducted for the benefit of their members. While one may easily recognize dishonest and racketeering elements in the labor movement, these may no more be taken as characteristic of trade-unionism than similar practices may be held to typify all business.

The trade-union movement thus takes issue with advocates of employee representation. It holds that collective bargaining through trade-unions is the only method by which workers' rights will be fully protected and contends that company unions are in reality an employer's creation, formed in the effort to avoid a genuine collective bargaining relationship. In a leaflet of the American Federation of Labor, a nine-point comparison is made between employer-representation plans and the A.F.L. union. Although this comparison is somewhat sketchy, it does throw light upon the attitude of the American Federation of Labor.¹⁰ The tabulation follows:

The Company Union

*The American Federation of Labor
Union*

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. Is formed by the company to prevent organization in a real union. 2. Is favored by employers because they know there is nothing to fear from such unions. 3. Can be destroyed by the employer at any time, since he runs it. 4. Is paid for by the employer and controlled by the employer. 5. Charges no dues and makes no contributions to general improvement in working conditions. 6. Does not secure higher wages or better working conditions. 7. Is not a true agency for collective bargaining since employee representatives under company union plans are required to follow the instructions of the management. | <ol style="list-style-type: none"> 1. Is formed by the employees themselves to secure better working conditions. 2. Is opposed by employers because they know that such unions will secure better working conditions for their workers. 3. Can never be destroyed so long as it is actively supported by all union members. 4. Is paid for by the union members and controlled by the union members. 5. Charges dues which help directly to build nation-wide organization and to bring about labor laws to protect workers. 6. Does secure higher wages and better working conditions, as is clearly shown by the history of the American Federation of Labor. 7. Is a true collective bargaining agency which negotiates with the management as directed by the union members upon questions of wages, hours and working conditions. |
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¹⁰ Pamphlet, issued in October, 1934, by the American Federation of Labor.

5. Is not able to bargain in the true sense of Section 7(a) because when the company bargains with the company union it does not bargain with the workers but with itself.
9. Is limited to one shop, plant or establishment, while employers themselves are so organized on a nationwide basis in trade associations that individual groups of employees are powerless.
8. Is chosen by the workers under Section 7(a) to represent them in collective bargaining.
9. Is affiliated with and supported by the American Federation of Labor, which is a nation-wide organization giving protection to all workers against organized employers.

The positive arguments for the trade-union are based essentially upon the independence of such a union as a bargaining agent. It has its own dues, its own treasury, and its own officers. It is responsive to the wishes of its members. It handles their grievances effectively. It is a phase of our democratic life, a means of giving workers a voice in fixing the conditions under which they work.

One should not ignore the union argument which emphasizes the importance of laying a wage base across an entire industry. If one employer gives his workers a substantially higher wage scale than that prevalent in the field, other less benevolent employers will tend to secure the business because they can hire labor on a much cheaper basis. So long as bargaining is by individual employers, the established level tends to approximate that set by the more grasping employer. In contrast one can observe the conduct of negotiations between a well-organized trade-union and an employers' association. If the union has a substantial membership among the workers in a given occupation, all employers signing the agreement will have a reasonable assurance that the minimum specified wage rate and maximum hours will be adhered to by all participants. The union has a genuine interest in maintaining these standards. Competing employers likewise have an interest. When contracts are let for building, these contracts may be based upon the payment of given wage rates. With his margin thus stabilized the efficient employer finds other employers unable to undercut him by reducing wages.

One phase of the argument over collective bargaining is the issue of the closed shop through which the union compels the hiring only of men who are members or are eligible for membership.¹¹ Employers have severely flayed the closed shop because they regard it as a step toward the creation of a labor monopoly, but union insistence on the closed shop is not as arbitrary as it appears to some employers. What the union desires is effective collective bargaining. That bargaining is endangered if an employer is allowed freely to substitute nonunion men for union men and to engage in other forms of discrimination. Furthermore, the union must have funds to conduct negotia-

¹¹ For a fuller discussion of the closed-shop issue, see below pp. 366-67.

tions with the employer. If nonunion men are able to glean the benefits that the union has secured without paying their share, there is less incentive to join. Hence unions have frequently insisted that it negotiate for all workers in the craft or industry and be permitted to compel all the employees it represents to join the union.

The employers' desire to recognize superior ability is conceded by most unionists who contend that their efforts are designed merely to provide minimum scales of pay for various skills below which the union employer is not allowed to go. If the worker is felt to have superior ability, the employer is permitted to pay him a higher scale. Indeed, in many unions piecework is permissible if it is negotiated with the union. This of itself will allow the faster worker to secure a higher wage commensurate with his ability than that earned by the slow worker.

The case for collective bargaining through trade-unions has in recent years been given impressive support. A research report of the Twentieth Century Fund concludes:

All in all, the balance is on the side of trade agreements and collective bargaining. It follows from this that public policy demands (1) that employees should not merely be given the right to organize for purposes of collective bargaining, but that they should also be extended the fullest possible protection and support when they choose to exercise this right in lawful manner, and (2) that the making of trade agreements be fostered and encouraged.¹²

WRITTEN COLLECTIVE BARGAINING AGREEMENTS

In discussing the requirements for genuine collective bargaining we indicated some of the reasons why collective bargaining agreements should be reduced to writing. The written agreement is also an important step in the development of democracy in an industry. It crystallizes the position of the employer and his workers for a given period. It reflects a recognition that the workers in an industry collectively are to be given a status which, as they perfect their organization, may be progressively improved. Opposition to written agreements comes chiefly from employers who feel that negotiations with a union represent only a temporary concession and who refuse to bind themselves to enter into continued and organized business arrangements with representatives of a majority of their employees because they regard such agreements as a surrender of their rights as employers.¹³

¹² Twentieth Century Fund, *Labor and the Government*. McGraw-Hill Book Company New York. 1935. P. 7.

¹³ Employers of this type are likely to be those actively engaged in the smashing of unions through intimidation or spying. David J. Saposs, *Written Agreements in Collective Bargaining*, *op. cit.*, p. 12.

Other employers who are somewhat less extreme in their opposition to unionism object to the trade agreement merely because they do not wish to symbolize the fact that their traditional authority has been lost. Although they may have yielded to the pressure of the union, the law, and public opinion on what they consider the essentials, they wish at least to keep the appearance of the old order. Many small employers, on the other hand, tend to feel that a written agreement will destroy the personal quality of their relationship with their employees and will hamper the conduct of their business.

CONTROVERSIAL ISSUES IN COLLECTIVE BARGAINING

Many highly controversial issues arise during collective bargaining negotiations. Shall all workers in the shop be compelled to join the union? If so, should the company, with the workers' permission, subtract union dues and assessments from the pay envelopes under a checkoff system? Is work to be equally divided during slack periods? What shall be the standard weekly hours of work? What safeguards will surround the hiring of apprentices? Who shall be charged with the enforcement of the agreement? What penalties, if any, shall be imposed for its violation? Who shall determine whether a man is inefficient? Questions such as these must be considered by the negotiators in addition to the difficult basic issue of wage rates.

The terms of the settlement are likely to turn upon the comparative bargaining strength of the parties. In good times the union will seek to strengthen its position, in bad times to hold its gains. Long arguments will mark the negotiations but in the last analysis the agreement reached will be a compromise which will seem to both sides superior to the alternatives of industrial strife or continued bickering.

In most cases, the negotiators are compelled to feel their way toward a settlement without an accurate knowledge of the essential facts concerning their industry. There exists a paucity of reliable data on profits, production, and annual earnings of employees in most fields, in part because of the secretiveness of manufacturers and in part because of the absence of accurate cost accounting. Naturally each side seeks to make the most of the data at its command, often relying upon a research department to organize its arguments. The difficulty of arriving at an equitable and decisive solution to the problems in dispute will be apparent from a consideration of the typical questions which face the conferees and the manner in which agreements have sought to settle them.

Union membership and the closed shop. Most unions have for their ideal *the closed shop*, which compels the employer to hire only members of

the union.¹⁴ A few of the skilled craft groups like to couple this with a *closed union*, which compels the employer to add to his force only those men secured through the union business agent. Much more common is the use of the *open union* with the closed shop. In that case it is only essential that a man join the union once he has been hired. The employer's right to hire is left unrestricted.

If the union cannot secure the closed shop it may seek the *preferential union shop*. This arrangement allows nonunion men to be hired only if qualified union men, after due notice, are unavailable. In periods of layoff the nonunion men go first. This arrangement protects employers against the possibility of a restricted number of job applicants and yet assures those who have supported the union the first chance at available jobs. In 1910 this plan received the support of Louis D. Brandeis as a solution to the deadlock in the New York ladies' garment industry.¹⁵ When the union later gained greater strength, the closed shop was established.

Most employers have long favored the *open shop*, under which there is theoretically no difference between union and nonunion men. Practically, however, employer interpretation of the open shop may vary all the way from this theoretical position, through employer discouragement of trade-union membership, to the cases in which any worker possessing a union card or found attending a union meeting is immediately dropped from the pay roll.

The *open union shop* stands in a middle position. Under it the employer may employ, without discrimination, both union and nonunion workers; yet at the same time he is willing to recognize the union and to enter into collective bargaining arrangements with it.

Years of effective propaganda on the part of the National Association of Manufacturers, the National Metal Trades Association, and other employer groups have had the effect of identifying in the public mind the closed shop with labor monopoly and restrictive practices; the open shop with democracy and the "American plan." The striking revelations of the Senate Civil Liberties Committee and the National Labor Relations Board have corrected this impression, revealing the open shop as an instrument which can be used to strengthen an autocratic employer's position.

It is, of course, true that many of the skilled and somewhat monopolistic crafts in certain trades, such as building, have gone to the extreme of demanding that the employer hire only the present members of their union while at the same time they have rigidly limited apprenticeship and have exacted

¹⁴ This discussion leans heavily upon the excellent description of the open and closed shop in Carroll R. Daugherty, *Labor Problems in American Industry*. Rev. Ed. Houghton Mifflin Company. Boston. 1938. Pp. 457-65.

¹⁵ Selig Perlman and Philip Taft, *History of Labor in the United States, 1896 to 1932*. The Macmillan Company. New York. 1935. IV, 298.

exorbitant initiation fees and dues.¹⁶ Nevertheless, attacks upon union labor tend to exaggerate the importance of the restrictive closed shop, which was a very conspicuous target during the 1920's when the building trades-unions and other skilled craft groups far overshadowed unskilled and semi-skilled labor organizations. Although the problem is likely to persist in the highly skilled trades, it does not follow that the closed shop is, as a general rule, abused. Many substantial industrial unions, such as the United Mine Workers and the International Ladies' Garment Workers' Union, have established racket-free closed shops.

Save for the railroad brotherhoods which have an open union shop, one may roughly gauge the bargaining strength of a union by the extent to which it can secure an employer's agreement to hire only union men.¹⁷ For the most part open union shops have been established by new and unseasoned industrial union groups; such groups would meet with uncompromising resistance from employers if they were to demand the closed shop. It is here that an important reason for the closed-shop drive emerges. An effective union needs a substantial treasury. If a union secures a closed shop (accompanied preferably by a checkoff of union dues by the employer), it has surmounted a substantial obstacle, since dues will be collected regularly and easily.

Hours, overtime, and vacations. The hours question, like that of wages, hinges upon bargaining pressure. Strong unions have nibbled away at hours, first attaining the forty-eight-hour week, then the forty-four, then the forty, and are now reaching toward the thirty-six and even speaking optimistically of the thirty. These reductions have been reluctantly put into effect, the unionized trades generally leading the procession. In their bargaining negotiations employers would be less prone to raise serious objections to hour reductions if it were not for their awareness that workers hold stubbornly to existing weekly wage scales without reference to the number of hours worked. Coupled with the problem of hours is that of overtime, holiday, and Sunday work for which the union requests and generally receives a higher rate of pay. Abuses in the length of the work-day in seasonal industries have been so great that in such fields this is the central topic for collective negotiations whenever unionization occurs.

A survey of the terms of 5,000 collective bargaining agreements, conducted in 1937 by the United States Bureau of Labor Statistics, suggests the diversity of practice in the agreements. The forty-hour maximum work-week is in effect in the large majority of the agreements and almost invariably in

¹⁶ These practices have contributed to the spread of racketeering in certain of the building trades unions. See e.g., Harold Seidman, *Labor Czars*. Liveright Publishing Corp. New York. 1938.

¹⁷ The brotherhoods are so powerful that they have never demanded complete unionization.

such important fields as iron and steel, stone, timber, rubber, petroleum, metal mining, aluminum, and (except for stove manufacturing) metal fabrication.¹⁸ The mining and fur unions of the C.I.O. have a thirty-five-hour maximum. The men's clothing industry (C.I.O.) has thirty-six hours, while the International Ladies' Garment Workers' maximum ranged from thirty-five to thirty-seven and a half hours. Motion-picture operators (A.F.L.) have the thirty-six-hour week. Hours exceeding forty-eight a week were to be found in certain agreements of such unions as the butchers, hotel and restaurant employees, and barbers.

The five-day week is even more common than the forty-hour week. Overtime is most frequently on a time and a half basis although double time is common. Many agreements make allowances for overtime during peak-load periods. Holidays included in union agreements average six a year, while their number ranges from three to fourteen. Annual vacations with pay are general only in collective agreements covering the C.I.O. unions in rubber, petroleum, iron, and steel. Many urban transportation workers, retail clerks, and gas company employees are similarly favored. The amount paid while on vacation is typically based on an average of previous earnings. Usually vacation rights are granted only after one year of service, although longer periods are also required by some. The most common length for the vacation period is from one to two weeks.

Wages. When a union and an employer enter negotiations concerning wages they are dealing with a complex of issues which cannot be reduced to any simple principles of equity. Should, for example, the worker be paid according to his "productivity"? If so, how set the wage scale of a man producing five hundred holes in as many steel plates during a day? Should he be paid a penny a hole or two cents? Or more? Should his pay be greater if he supports a family out of it? Should it fluctuate with living costs? Should it rise with the profits of the industry or the particular company? Or according to general prosperity? Should it vary with the worker's skill? Should it vary as between men and women? Should hourly earnings increase if the hours are shortened? Should the pay be higher if the work is disagreeable or performed at night? Or should it be keyed to the "competitive wage" on the outside? If so, should the base be the union wage of other groups who are themselves beset with the problem of wage equity? Or should it be fixed by the nonunion scale in some roughly comparable field?

It is little wonder that collective bargaining conferences typically resolve themselves into wage debates. In each industry the base line is the scale then in force. It is the task of the union to improve upon this by setting forth its most convincing arguments. It is the role of the employer to offer a stout

¹⁸ *Monthly Labor Review*, 47, No. 2 (February, 1938), 341-48.

resistance. If the cost of living is mounting, this becomes one of the central arguments for the union. If there has been a rapid rise in per capita labor productivity, unions will discover that wages should be associated with productivity.

For years the unions in most trades fought bitterly against the principle of piecework. Save in certain highly skilled crafts compromise has often been effected of late on condition that the union have some voice in the establishment of the piece rate. But even a piece rate gives no clue as to equity. It is for the union to see how much it can secure through collective pressure, in order that its members, without excessive speed-up, can augment their incomes. The negotiations over wages have increasingly come to reflect the union belief that some kind of annual salary should be guaranteed by an employer. Such a guarantee has been rare, but the continuance of serious unemployment and the inadequacy of existing unemployment compensation plans point to a need for growth in this direction.

The problem of wage adjustment is further rendered complex by the number of differing tasks for which the rate of remuneration is to be determined. The presence or absence of an industrial union as a bargaining unit does not abolish the many shades of distinction that have grown up between groups of workers. In a machine shop, however highly mechanized the work, there remains a gradation. Tool makers will consider themselves a group distinct from machine operators, inspectors, or filers. Customary differentials and customary privileges which have grown up around tasks leave in the mind of the workers a certain sense of essential differentiation.

In the collective bargain these conflicting job interests are so great that extreme care must be exercised if an industrial union is to maintain harmony within its ranks. Generally members of each distinguishable craft group are represented upon the union's negotiating committee or scrutinize the agreement before it is ratified. Furthermore, questions of adjustment of complex piece rates are sometimes left to employers and representatives of the particular craft involved. The rate schedule is likely to be an involved document, parts of which represent a codification of existing privileges previously granted to particular groups.

In older countries there has developed a tendency to key the basic rate of pay either to the price of the particular product manufactured or to the cost of living. In Great Britain, for example, the wages in the steel trade fluctuate with the price of pig iron, while in Australia the majority of wage scales are shifted in accordance with the cost-of-living indexes of the Commonwealth Statistician. While such devices as these greatly simplify wage fixing, it is doubtful if they afford greater justice. In America such methods have not received wide acceptance since unions feel that they fail to reflect the capacity of the economic system to remunerate labor. If, for example, increased

mechanization throughout the industry leads to lower product prices and hence lower living costs, should wages, in justice, be lowered? Labor's reluctance to accept such principles does not suggest that it has a satisfactory solution. In fact, union pressure is frequently placed behind such general ambitions as a 10 per cent increase in pay, two weeks' vacation with pay, or a reduction in working time of four hours a week with weekly pay remaining constant. The union does not always inquire closely whether such demands are equitable, but presses ahead in the belief that its immediate mission can only be fulfilled when a "satisfactory bargain" has been struck. Once achieved, a standard is stoutly defended.

The "union scale" for each of the distinguishable occupational groups forms the minimum official rate for union labor. In good years it is possible that superior workers will be paid higher than the scale requires, and in bad years union agents are likely to wink at violations of the wages clause. Overtime rates are commonly included to penalize the employer who exceeds the commonly accepted working time. In a few cases, the union will itself determine its scale and announce it to employers on a "take-it-or-leave-it" basis. More commonly, its terms are carefully gone over and may often be settled by arbitration.

The following examples will illustrate the nature of union scales. A journeyman printer of Denver, Colorado, received in May, 1933, a union scale of \$1.07 an hour, or \$46.00 for a week of forty-three hours. Overtime work was charged for at the rate of time and a half, although Sunday work came at the same rate as week days. The scale for union route drivers on ice-cream wagons in Chicago in May, 1933, was 59.3 cents an hour, or \$32.00 for a fifty-four-hour week. Time and a half was allowed for overtime. Union granite cutters in Providence, Rhode Island, were then receiving \$1.00 an hour for a forty-hour week. Under their contract, time and a half was charged for overtime and double time for Sunday work. These scales are quoted not to suggest the average level in any particular trade or to indicate the level of union wages in the country. They reflect merely the procedure by which a wage basis is laid in an occupation. The reports of the union of granite cutters, for example, show that the minimum rate for the country was \$1.00 an hour. In some cities this rate had been pressed upward by 10 cents or, at the extreme, by 25 cents. Hours likewise varied from forty to forty-four, about half of the cities being on a forty-hour basis. Through its publications the union is able to keep its members in touch with these scales. Employers, on their part, are likely to be aware of union rates in other cities.

Apprenticeship. Closely related to the question of the closed shop is that of apprenticeship. This problem has become of decreasing importance with the decline of highly skilled crafts and the concomitant growth of mass pro-

duction symbolized by the assembly line. Skilled unions have long sought to limit entrance into their crafts in order to fortify their wage position. To some extent these limitations were pressed upon employers in trade agreements under a clause prescribing the maximum ratio of apprentices to journeymen (say one to ten). The length of apprenticeship was also controlled. Entrants into the trade have also been discouraged by high initiation fees, high dues, and by race, sex, or other discriminations. Such practices have been justified by the argument that the union is putting its seal of approval upon the work and therefore allows in its ranks only those who fully qualify. Moreover, it is held that if skilled unions do not exercise great care as to the wage scales and working conditions of apprentices, unscrupulous employers will tend to man their business with a succession of learners rather than with skilled artisans.

Of late the apprenticeship problem has in large measure been turned over to vocational and public schools, with employers tending to look with favor upon the removal of apprentice workers from the job. Though the abuses growing out of excessive union demands in this field have been declining, the problem is by no means settled. Neither the unions, the employers, nor the public school system have been able to find any way of adjusting the number of individuals with given craft skills to the highly fluctuating market demand of recent years. Although one can sympathize with the desire of the crafts to keep their numbers down to a point that will furnish each craftsman on an average with enough work for a satisfactory living standard, this policy is found to swell the ranks of the unemployed elsewhere.

Machinery for administration and interpretation. Much of the success or failure of collective bargaining rests upon the care with which the clauses dealing with administration are drafted. It is at this point that the union represents the workers in the day-to-day round of minor settlements. In a small union shop it is comparatively easy for a union officer or business agent to go directly to the foreman or the superintendent. In a larger enterprise, such as a railroad or steel company, the situation is vastly different. There the agreement will call for the routing of disputes through committees, from whose decisions there may be an elaborate system of appeals.

Even the greatest care in drafting the agreement cannot settle all the disputed questions which are bound to arise during the term of an agreement. On such points of fact and interpretation it is becoming increasingly customary for an impartial arbitrator to be hired and selected by both parties. His decisions are binding. Such boards now exist in the men's and the women's clothing industries, in the hosiery industry, in the printing trades, and in a number of others. The effort is, of course, to minimize the work of the impartial chairman by effecting as many direct settlements between the

two parties as possible. An illustration of the type of problem faced can be drawn from the titles of decisions of the Impartial Chairman in the full-fashioned hosiery industry, Dr. George W. Taylor of the University of Pennsylvania:

- H 4 Union Protest of action of company in having its work finished in outside (non-union) plants and thus decreasing employment in its own finishing department.
- H 2 Union appeal of the discharge of a knitter as discriminatory.
- H 42 Union claim that an extra rate be allotted, because of the use of sub-standard equipment on piece work jobs.

In the hosiery industry both sides are required to file bonds guaranteeing the faithful performance of the contract. In practice such financial penalties are not often invoked.

Collective bargaining agreements do not fall into the usual category of business contracts. Hitherto judges have been reluctant to treat them as more than unenforceable memoranda between two or more parties, one, at least, of which is unincorporated. Recent court opinion is, however, coming to hold that collective bargaining agreements are legally enforceable both upon the unions and upon the employers, and courts are awarding damages to the aggrieved party.¹⁹

ANALYSIS OF ITEMS IN A COLLECTIVE BARGAINING AGREEMENT

Collective bargaining agreements vary greatly. The simplest are mere penciled memoranda covering a few basic items such as wages, hours, and overtime. The more elaborate ones are long, printed documents which follow a somewhat standardized pattern. They begin with a preamble which suggests the desire of the parties to live in peace, harmony, and good will. Then they proceed to the real task of elaborating in language not easily subject to misinterpretation the terms of the contractual relationship. These terms are in many cases so technical as to be almost meaningless to one not familiar with the trade. Having set up specific standards, the agreement establishes joint machinery of enforcement which is characteristically handled as directly as possible between the representative of the workers and the employer. Provision is made, however, for the amicable settlement of knotty points in the interpretation of the agreement.

Some of the problems involved in establishing collective bargaining relationships may be thrown into relief by a detailed description of each of the major items covered in a fully developed agreement:

¹⁹ Daugherty, *op. cit.*, p. 455.

1. *Definitions of terms, union membership, etc.:*

All agreements contain various provisions which define the types of workers that are covered by the agreement, distinguish between the worker and the supervisory force, discuss the various features of hiring and discharge, the relation of the worker to the union and the union to the employer, the admittance of union representatives to the shop to confer with individual workers, the reception of union representatives by the employer and similar provisions. All of these provisions are worked out in a very careful, businesslike manner, in order to avoid misunderstanding and to make possible the successful and smooth operation of the business under the agreement.

2. *Wages:*

In a large industrial establishment, employing workers of various trades, occupations and services, it is important that wage rates be carefully stipulated in accordance with specific classifications. Usually agreements stipulate the minimum rates below which employers are not permitted to hire. It is also important to indicate whether the rate of payment is by the hour, by the day, or by the week. This too, of course, has to be classified by occupations, trades, and services. Where workers are paid on the basis of piece-work, a very detailed classification and stipulation is essential. If bonus or other such forms of payment are contemplated under the agreement, these too have to be carefully described. The payment period, whether it be weekly, semi-monthly or monthly, is stipulated. The form of payment, whether in cash, checks, or otherwise, is also recorded.

3. *Hours of employment:*

While provision for the hours of work is relatively simple, nevertheless, a number of points have to be carefully stipulated in order to avoid frequent misunderstandings. Among these are the beginning and end of the working-day, the meal period, rest periods, pay for overtime and how much overtime is permitted, in order to prevent overtaxing the worker, provisions for holidays, vacations, and other matters affecting the length of the work period are likewise carefully written down.

4. *Apprenticeship:*

In industries and trades employing apprentices, it is necessary carefully to stipulate the period of the apprenticeship, the nature of training the apprentice is to receive, the number of apprentices that can be employed per journeyman, etc. It has been found that some employers have taken advantage of the employment of apprentices in hiring individuals at relatively low compensation and not really giving them the necessary training for the trade, or in indiscriminately employing an unlimited number, thereby flooding the market with poorly trained craftsmen. In order to safeguard the interests of apprentices and to protect the interest of their members as craftsmen, union agreements usually contain lengthy and carefully worded provisions as to the nature of training an apprentice is to receive, even indicating how long an apprentice is to be expected to work on particular processes and operations, so that the apprentice will receive an all-around [*sic*] training in the trade. There are usually also provisions indicating the scales of pay that the apprentice is to receive and providing for an increase in pay periodically as the apprentice becomes more skilled.

5. *Protecting worker's right in job:*

Other important provisions, such as seniority rights, rotation of work during slack periods or the shortening of the length of the work-day in periods of business depression, are also carefully described in the agreements. Through seniority, the worker who has devoted a longer time as an employee of the particular company is protected in his rights in case of promotion, in case of lay-offs, etc. Quite often agreements, through rotation of work, assure the worker of some income during periods of depression as well as his status in the job. The shortening of the length of the work-day is another means of making it possible for those who have invested their life's work in the service of an employer to be certain of some income during slack periods and to be certain of a permanent job.

6. *Sanitation and safety:*

Comfort and safety of employees is also provided for in the written trade agreement, by requiring various sanitary facilities, like washrooms, toilets, places to hang clothes, and lunchrooms. A great many agreements safeguard the workers' health by providing for proper ventilation, proper heat, proper light, protection against dust-raising and other unhealthful conditions, proper safeguards of machinery, etc.

7. *Duration of agreement:*

Virtually all agreements have a specific provision for the duration of the agreement. Agreements usually run from one year to five years, both sides pledging themselves to abide by the agreement during its duration. This arrangement guarantees continuity of production by forbidding strikes and lock-outs and pledging both sides to a firm observance of the agreement.

8. *Administration of agreement:*

There is also provision for the machinery through which the agreement is administered. These provisions usually describe how grievances of individual workers or groups of workers are to be handled and adjusted. They also indicate how the employer may proceed when he feels that some of the conditions of the agreement are not lived up to, and generally provide for a businesslike administration of the agreement, indicating all the steps that must be followed in order to adjust differences and to eliminate friction.

9. *Interpretation of agreements:*

Provision is made for machinery to interpret agreements. In a great many cases such machinery may be of a permanent nature [as] in the garment, coal mining, and the railway industries. In these industries machinery has been set up which is jointly financed by the union and by the employer and which acts as a court in interpreting the trade agreement. A special effort is usually made to have permanently paid persons who have the opportunity to familiarize themselves thoroughly with the technical operations and business methods of the industry, and who are constantly available for the adjustment of differences that might arise, so as to reduce friction and misunderstanding to a minimum. This machinery has usually proved highly successful in assuring stability and continuity of operation. There is at least one instance on record where the employers have asked that the international president of the union act as the arbitrator in the interpre-

tation of agreements when differences arise between the employers and their employees. This arrangement has worked satisfactorily to both sides for close to a quarter of a century.

10. *Renewal of agreements:*

Most agreements also have a provision describing the procedure to be followed for their renewal. Usually it is provided that at a stated period—generally sixty or thirty days—before the expiration of the agreement representatives of both sides must come together and negotiate in good faith for the renewal of the agreement. In a few instances there is a provision that if the terms for the renewal of an agreement cannot be arrived at in negotiation, the matter is to be submitted to arbitration. Pending settlement, the terms of the agreement remain in force.²⁰

COLLECTIVE BARGAINING AGREEMENTS

One especially interesting collective bargaining agreement is that of the Rocky Mountain Fuel Company with mines in northern Colorado. Although this case is not entirely typical, it is chosen because it illustrates what an agreement may become when both the employer and the employees seek the extensive use of collective bargaining machinery. Prior to its control by the present management this company was involved in a heated labor conflict in which a number of pickets were killed. A change of management resulted in a contract with District 15 of the United Mine Workers of America.²¹ Since the agreement runs for some twenty-four pages, we are here summarizing only its more important provisions.²²

1. *The period of the agreement:*

The agreement is to be in force for the period between September 1, 1928, and August 31, 1930.

2. *Declaration of principles:*

"We, . . . , seeking a new era in the industrial relations of Colorado, unite in welcoming this opportunity to record the spirit and principles of this agreement. Our purposes are:

- "(a) To promote and establish industrial justice;
- "(b) To substitute reason for violence, confidence for misunderstanding, integrity and good faith for dishonest practices, and a union of effort for the chaos of the present economic warfare;
- "(c) To avoid needless and wasteful strikes and lockouts through the investigation and correction of their underlying causes;

²⁰ *Written Agreements in Collective Bargaining, op. cit.*

²¹ The I.W.W., not the United Mine Workers, had conducted the 1927 strike. The company insisted that negotiations be conducted through the United Mine Workers, then an affiliate of the American Federation of Labor. Mary Van Kleeck, *Mines and Management*. Russell Sage Foundation. New York. 1934. P. 44.

²² Agreement by and between the Rocky Mountain Fuel Company and the United Mine Workers of America, District 15.

- “(d) To establish genuine collective bargaining between mine workers and operators through free and independent organization;
- “(e) To stabilize employment, production, and markets through cooperative endeavor and the aid of science recognizing the principle that increased productivity should be mutually shared through the application of equitable considerations to the rights of workers and to economic conditions affecting the operations and business of the company;
- “(f) To assure mine workers and operators continuing mutual benefits and consumers a dependable supply of coal at reasonable and uniform prices;
- “(g) To defend our joint undertaking against every conspiracy or vicious practice which seeks to destroy it; and in all other respects to enlist public confidence and support by safeguarding the public interest.”

3. *Hours of labor:*

“Eight hours shall constitute a day’s work in and around the mines, and it is definitely understood that an eight-hour days means eight hours work, at the usual working place, exclusive of one-half hour for mid-shift lunch, six days a week when required by the Company. . . .” Exceptions are provided for holidays. Mule drivers shall work eight hours, not including the time necessary to take their mules to and from stables.

4. *Equal work:*

In general, “an equal turn” shall be kept. (By this is meant that the jobs shall be divided as between the company’s employees on a prescribed list so that each man works approximately the same number of days as another.) Some exceptions are made.

5. *Wage payments:*

Wages shall be paid twice a month and an itemized statement furnished to workers two days before pay day.

6. *Pit committee:*

The union may appoint a pit committee of not more than three men, all of whom shall speak English and be the employees of the mine for which they act. This pit committee shall adjust disputes with the foreman or pit boss or any member working in that pit. Any agreement reached shall be in writing.

7. *Right of appeal:*

If the pit committee fails to adjust grievances with the pit boss or foreman, the case shall be referred to the mine superintendent and the district president of the United Mine Workers. If they fail to agree it is taken up by the president of the district and the manager of the mine operations of the company. From there it shall be referred to the president of the company and the international president of the United Mine Workers. Work shall continue during the time of appeal, no discrimination being practiced against an employee. If a worker quits because of a grievance his place shall be filled by the United Mine Workers if his action seems likely to impede the operation of the mine.

8. *Control over discharge:*

The right to hire and to discharge is vested entirely in the company, but discharge shall be handled in the manner provided for above. If an injustice is done, reinstatement shall include full compensation for lost time. (Some limitations are placed on this.)

9. *Checkweighmen:*

The miners may elect a checkweighman.²³

10. *Discipline:*

Two days or more of absence without advance notice, except for illness, causes the forfeit of a position. Any absence without notice on the part of a key person means loss of job. In case of suspension of mining due to any cause—including a strike—the engineers, firemen, pumpers and others necessary in the mines shall continue their work to keep the mine in condition, but shall not be required to hoist coal produced by nonunion labor for sale on the market.

11. *Checkoff:*

The company agrees to checkoff, that is to deduct from the workers' pay, the dues, fines, and assessments of the United Mine Workers, provided that each miner signs a written authorization.

12. *Stoppage for accident:*

A mine may cease work on the day that death by accident occurs, but not for a funeral, though individuals will not be prevented from attending a funeral.

13. *Union jurisdiction:*

Union jurisdiction shall not apply to certain specified categories of managerial employees or to those on extensive new construction jobs. (The details are specified.)

14. *"Dead work":*

"A miner or tonnage worker shall not be required to perform unusual dead work (i.e., time spent in timbering or in getting out rock) for which no scale is provided or perform work in deficient places that reduce his earnings." Any grievances on this point may be raised with the pit committee.

15. *Working places and materials:*

"The company shall keep the mine in as dry a condition as practicable" and lay all permanent tracks. The miners and loaders shall lay the room track and temporary track in the entries.

16. *Dirty coal:*

"In order to insure the production of clean marketable coal it is herein provided that if any miner or loader shall load with his coal, sulphur, bone, slate,

²³ A checkweighman's function is to assure the crediting of correct weights for coal dug. The right to have a checkweighman on the tippie has frequently been a major demand of the miners' union.

black-jack or other impurities, he may for the first and second offenses be warned, and for the third or any subsequent offense occurring in any thirty-day period, he may be suspended for five days, or for any aggravated or malicious case the miner or loader so offending may be discharged."

17. *Mine supplies:*

Reasonable prices shall be charged for mine supplies. The union and the company shall decide upon the price of house coal for miners. A bath house shall be equipped by the company upon petition by majority of the employees. The employees shall pay a portion of the expense. Hot and cold water shall be provided.

18. *Medical department:*

The company shall provide a medical department which shall seek to improve medical conditions both among the men and for their families. Charges of \$1.00 a month for unmarried men; \$1.50 a month for married men and their families shall be deducted. Joint control of this department is provided for.

19. *New machines:*

New machines may be introduced by the company. Permanent rates for new machine work shall be established by joint negotiations.

20. *The wage scale and productivity:*

The wage scale shall be \$7.00 a day, but if 51 per cent of the tonnage of Boulder and Weld Counties is produced on a wage scale of less than \$6.77 a day, this \$7.00 scale shall be reduced, but a favorable differential at least of \$.23 shall be always maintained during the term of the agreement. If the union finds contracts with 65 per cent of the tonnage in the district, the differential disappears. The union promises co-operative efforts "and increased efficiency." (More than four pages of detailed wage scale for specialized workers and for piecework follow.)

21. *Renewal of contract:*

The two parties shall meet on or before July 1, 1930, to negotiate a new agreement signed by representatives of both sides.

One may note that this mining agreement is expressed in terms of the specific conditions and hazards of the miner's job. The items included are the day-to-day issues that arise in a miner's life and are likely to cause dissatisfaction if no method for settlement is at hand. The topics range from provision for a bath house to the authorization of a checkweighman. The question of wages is present but it is by no means the exclusive subject of collective bargaining.

A quite different sort of collective bargaining was drawn up July 1, 1935, between the New York Clothing Manufacturers' Exchange and the Amalgamated Clothing Workers of America. A nineteen-point contract signed by both parties was drawn up as a legal document, starting with the clause: "in consideration of the sum of one dollar, each to the other in hand paid."

Applied as it is to an urban industry, featured by small units of production, the contract covers issues which vary greatly from those encountered in coal mining.

The high spots to note in the clothing workers' contract are: (1) the elaborate clauses for the interpretation and enforcement of the agreement without stoppage of work; (2) the broad scope of the items which are covered by this agreement, including unemployment insurance, division of work, employment of child labor, and various standards of employment; and (3) the limitations placed upon the subcontractor system.

A summary of the agreement follows:

1. Only members in good standing in the union shall be employed in the cutting, making, joker-sewing, in the cutting room, carting, and shipping room in any factory or establishment owned or controlled by the manufacturer. Any contractors employed by the manufacturers must use exclusively union labor on such jobs.

2. "The Union shall furnish the Manufacturer, to the best of its ability and within a reasonable time, with such employees as the Manufacturer may reasonably require, on the terms and conditions contained in this agreement. If the Union be unable to furnish such employees within a reasonable time, then in lieu of the obligation of the Union to furnish such employees, the Manufacturer shall have the right to obtain Union employees in the open market."

3. An eight-hour day and a thirty-six-hour week is provided for, except for shipping clerks, who work forty hours.

4. "Substantially equal" work shall be given all regular employees during slack seasons by mutual arrangement between the union and the manufacturer.

5. No homework is to be permitted by the manufacturer.

6. Wages shall be paid in accordance with the classification of grades and prices established under the agreement. These shall not be changed unless sixty days' notice is given, prior to the expiration of any anniversary date. If such notice is given, a conference is held and any agreed change shall be effective on the anniversary date. The agreement may be "terminated in good faith" if no agreement can be reached after a thorough canvas of the situation by the time of the anniversary date. In the case of any manufacturer who resigns from the Manufacturers' Exchange, or who leaves that exchange, provision is made for a conference upon thirty days' notice prior to an anniversary date between the employer and union. If they disagree, the case is submitted to the impartial chairman in the market whose determination shall be binding upon both parties.

7. Having given one day's notice in writing to the manufacturer, the union shall have the right to take up the question of the heights as affecting the cutters.

8. The manufacturer shall pay 1½ per cent of the total union labor cost of clothing into a New York Clothing Unemployment Fund, to be disbursed as provided for in a separate agreement. Payment into such a fund is, however, abandoned in the event that a federal, state, or municipal unemployment fund is established requiring the payment of similar obligations required for the protection of workers employed in New York clothing factories.

9. Manufacturers shall be permitted to employ only contractors "reasonably required to do their work." Both parties must consent to the change, release,

or addition of new contractors, all of whom shall be registered. The manufacturer shall in all cases take responsibility for contract work as well as for work done in his shop.

10. If a contractor shall fail to pay his employees, the shop chairman and the shop committee shall at once notify the Exchange and "cause the workers to cease employment," unless the union and the Exchange have arranged for the continuation of the work. Back pay shall be furnished by the manufacturer upon whose garments the work has been performed.

11. Canvas coat fronts and shoulder pads used by the employer shall be made in union shops and shall bear the union label.

12. No children under sixteen years of age shall be employed in any shop operated by or for the manufacturer.

13. Failure to agree "with respect to any complaint, grievance, or dispute, or with respect to any breach of this agreement" shall be referred to the impartial chairman of the New York Clothing Industry, designated by the exchange and the union. He shall arbitrate the case and his award "shall be final, conclusive, and binding on all the parties." His finding "may be enforced by appropriate judgments thereon to be entered in a Court of law or equity."

14. All strikes and lockouts are prohibited for the period of the agreement. If such occur, the arbitrator "shall have the power to impose appropriate discipline." The aggrieved party may, on four hours' notice, demand a hearing before the impartial chairman.

15. In the case of any controversy, the manufacturer's books and records shall be available to authorized representatives of the impartial chairman "who in his discretion may authorize the auditor of the exchange to make such examination for the purpose of determining the amount of goods cut, made or being made by or for the manufacturer and for the purpose of ascertaining the names and addresses of the persons, partnerships, firms, or contractors doing such work, and for the general purpose of determining whether the terms of the agreement are being fully carried out."

"16. Notwithstanding the resignation of any member of the New York Clothing Manufacturers' Exchange, or the removal of any member of his clothing establishment to a place outside of New York City, the obligations of this agreement shall remain in full force and effect and shall be binding upon such member for the full term thereof, to wit, June 30, 1937, its extension and renewals.

"17. No officer or director of the Manufacturer . . . shall . . . become directly or indirectly interested in any clothing shop or any subsidiary thereof, or in any clothing establishment as manufacturing jobber, manufacturing wholesaler, or manufacturing retailer which does not employ employees, members in good standing of the Union, or contractors employing members in good standing of the Union."

18. The manufacturer and the Union shall have an equal voice in fixing the price of each operation, "provided the total labor cost of the garment has been previously agreed upon between the manufacturer and the Union."

19. The agreement shall go into effect July 1, 1935, and continue until June 30, 1937.²⁴

²⁴ Signed July 1, 1935, by Sidney Hillman of the Amalgamated Clothing Workers, by the New York Joint Board of that organization, and by representatives of the New York Clothing Manufacturers' Exchange.

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QUESTIONS

1. Why have many corporate managers so bitterly resisted the introduction of collective bargaining in American factories?
2. Explain the meaning of union recognition.
3. Why do unionists insist upon a written agreement?
4. What specifically did the Labor Relations Board intend that the Colt Company should do if it were genuinely to undertake collective bargaining?
5. Appraise the several arguments in favor of: (a) individual bargaining; (b) collective bargaining with employee-representation plans; (c) collective bargaining with trade-unions.
6. Why was the Rocky Mountain Fuel Company agreement at the time of its adoption so bitterly condemned by other Colorado coal companies? Are there any provisions in the agreement which suggest unfairness?
7. To what extent are the problems in the agreement of the Amalgamated Clothing Workers different from those suggested by the United Mine Workers' contract?
8. Discuss the issues involved in the question of the open versus the closed shop.
9. What in your opinion is a fair wage? Is there any objective means by which equity may be secured in wage negotiations?

WELFARE AND BENEFICIAL ASPECTS OF 19 . . . TRADE-UNIONISM

INTRODUCTION

THE trade-union is the workers' club, as well as an agency of collective bargaining. The union, in fact, forms the orbit of a wide range of social and beneficial activities on behalf of its members. Though specific activities differ widely as between organizations, each union, depending upon its age and membership bond, develops a fraternal spirit, a "personality." Some of the older groups feature elaborate rituals, mystic symbols, grand masters and doorkeepers. Even those which scorn such forms generally make their meeting halls gathering places for friendly discussion and social centers for at least the more active members. Indeed, relatively few unions are of a pure business type. Those that have this single purpose are likely to be subjected to autocratic or racketeering control; they hold but few meetings and limit their union activity to the routine of dues collection. In the main, union activities include such features as bowling clubs, baseball teams, whist drives, picnics, womens' auxiliaries, amateur theatricals, adult educational classes, health care, death benefits, and credit unions. Such work, though incompletely developed in any single union, is all part and parcel of unionism. The worker who joins a labor organization becomes attached to an institution which has many ways of claiming his allegiance. Where craft feeling dominates and where there exists a homogeneity among the workers, the union is a close fraternity, a guild. Its members proudly wear its badge or place its emblem upon their

cars. They pride themselves upon the record of the organization and upon the craftsmanship and solidarity which a membership card attests.

Various factors are responsible for the welfare and beneficial activities of trade-unions. In the first place, several unions were originally started, not for the purpose of engaging in collective bargaining, but rather to act as a medium for mutual insurance; it was felt that the need for protection of the worker in case of unemployment, illness, and death could be met by the establishment of a workers' organization which could pay out-of-work, sickness, and death benefits. In the course of time, such organizations extended their activities into the field of collective bargaining. Second, many unions had their origin in small meetings of workers who drank "a friendly pint of porter" together; it was but natural that the unions should continue along such lines and make fraternal activities a part of their program. This is particularly true in small communities where the union serves as almost the sole medium for social and cultural functions. Third, unions offer fraternal and welfare activities as an inducement to prospective members in much the same way that employers offer personnel departments. Fourth, such activities are recognized as having a real value in keeping the union going in times of stress; members who are covered by various benefits will be reluctant to leave the organization during depressions. Fifth, some unions have adopted fraternal and welfare activities in a deliberate effort toward social progress; they view cultural, social, and beneficial programs as a great help in raising the workers' cultural and economic level. Finally, in many cases, the activities mentioned have been adopted because it was the "thing to do" at a given time. There are fashions in union policies as elsewhere, and union leaders often embark on given activities not so much because they really believe in them as because other unions are doing so—all leaders like to regard themselves as progressive.

One of the by-products of extensive activities of this sort is the need for funds which is often met by high initiation fees and dues. In the case of the International Typographical Union, for example, the old-age benefits and the mortuary benefits are paid for by a 2 per cent assessment on the members. It follows that elaborate benefits of this sort are feasible only where the members are relatively well paid; in the United States they have been largely limited to the old-line craft unions whose skilled members ranked high in the wage structure of American labor.

Among the newer unions, fraternal incentives are not so powerful. Other devices have of necessity been introduced to bring members to meetings and to raise the morale of the organization. In fact, one of the greatest trials that beset the C.I.O. was that of generating a close bond among workers of differing skills, nationalities, religions, and political beliefs. The task was made more difficult by the strong competition of independent fraternal organiza-

tions and ward political clubs, not to mention the encroachments of the radio, the automobile, and the movies. This competition from outside agencies has been a vital factor in compelling union officials to overhaul their tactics in their effort to secure the effective participation and loyalty of their members.

INSURANCE AND BENEFIT PLANS

Most unions seek to build up a treasury which will permit the payment of benefits in time of strike. Unions exacting higher dues also seek to cover such risks as sickness, ill health, disability, old age, death, or, in rare cases, unemployment.

Of the benefit funds, those for strikes are commonly essential for the survival of the organization. No uniform plan of strike benefits has been adopted, though in general unions require that members on strike be in good standing and that the strike be duly authorized. In return for benefits a member must report for strike duty—for picketing, distribution of literature, or other union activities. The amount and duration of strike benefits vary widely as between organizations. Some unions will carry on a strike with members receiving benefits for six months or a year, while others with smaller treasuries limit strike benefits to a month. In crucial strikes special assessments are made upon union members not directly involved in the dispute and other labor organizations are called upon for assistance.¹

A scattering of unions have adopted plans for assisting aged and disabled members. The operative plasterers, the quarry workers, and the street railway employees give lump-sum payments when a member retires from active work because of age or disability. The bricklayers, the structural iron workers, the carpenters, and a number of others pay monthly pensions from funds accumulated from union dues. Some of the railroad brotherhoods have a more elaborate annuity system based upon membership contributions. Some organizations maintain homes for the aged and disabled or sanitariums for tubercular treatment. The conditions upon which members receive benefits range from the severe limitations imposed by the carpenters—members unable to support themselves who are sixty-five and have thirty years of continuous membership—to the automatic pensions of the electrical workers at the age of sixty-five.² Eighty-five out of the one hundred and ten national and international unions studied by Carroll Daugherty were reported to be paying

¹ A few examples of strike benefits paid out of funds of international unions are given here: boilermakers and plasterers, \$10.00 a week; photoengravers, \$25.00 a week to journeymen; molders, \$9.60 a week; oil-field workers, \$10.00 a week to married men or those with dependents, \$5.00 a week to single men without dependents.

Handbook of American Trade-Unionism, 1936 Edition, Bulletin 618, United States Bureau of Labor Statistics, Government Printing Office, Washington, D. C. 1937. P. 25.

² *Ibid.*, pp. 26, 27.

death benefits in 1937. Twenty-three paid for sickness and ten for disability.³ Death payments, although ranging from \$20 to \$1500, average about \$150 and are seldom sufficient to meet more than funeral expenses. The 1937 union disbursements for death benefits amounted to \$12,500,000, nearly half of the total union benefit disbursements. Sickness and disability benefits were less widely paid, and accident insurance was carried exclusively by the employer under workmen's compensation plans.

Unions have sought to compel prompt payment of dues by withholding benefits from those not in good standing. Quite often high dues have been an attraction where the union could proudly boast that no member in good standing had ever been buried in a pauper's grave. There are a number of reasons for the disappointing operation of benefit plans. Many organizations failed to build up sufficient reserves to maintain benefit payments as the older age groups came to constitute larger and larger portions of their membership. Benefit funds were not always wisely invested or completely segregated from other assets. It has been difficult for unemployed members to keep up their dues payments. As a result many unions have tended to shift to insurance plans (often in union-owned companies) under definite contractual arrangements in which employers occasionally share the cost.

A few organizations (about fifteen in 1937) have direct pension plans for their aged members in good standing. Such pensions are, however, likely to be abandoned, because of the benefits afforded by Social Security Act. Unemployment benefits had also been paid by a limited number of small unions prior to the adoption of the Social Security Act. Union funds proved, however, insufficient to carry substantial benefits, and agreements with employers to provide for joint coverage on a voluntary basis were difficult to negotiate. Many locals would "pass the hat" or provide a special assessment for the unemployed. Some met the problem by waving union dues during a period of unemployment.

Benefit funds both aided and injured the labor movement. They were an advantage in that they developed more substantial treasuries, conditioned the membership in the habit of paying regular dues, and afforded the individual worker and his dependents relief during a critical period. There is no doubt, however, that such plans tended to make organized labor less friendly toward the governmental insurance proposals which would have spread substantial benefits over a large labor group instead of a tiny minority. Furthermore, benefit payments resulted in the "high-priced unionism" so often criticized and developed substantial treasuries which we have seen were often not wisely administered. When adequate reserves were not set aside members who had paid for a lifetime were bitterly disillusioned when their benefits were substantially lowered.

³ Daugherty, *op. cit.*, p. 498.

Progressive unions today treat their own benefit plans as supplementary to federal and state grants and stress instead their service to members in expediting unemployment insurance or welfare grants as well as their continuous pressure to increase the rates. Many of the C.I.O. unions have been especially active in this regard. Legal aid is another benefit service extended to some skilled groups as is tool insurance.

The International Ladies' Garment Workers' Union has led the way in developing for unionists a type of co-operative medicine. It has sponsored a Union Health Center in New York City through which members may receive medical and dental treatment at nominal cost. Other unionists are invited to make use of their facilities. The Amalgamated Clothing Workers have launched similar activities in other cities. In the main, however, this field has been much neglected by unionists.

RECREATIONAL ACTIVITIES

The solidarity of unions has been enhanced by the encouragement given to baseball, bowling, and other sports activities and by the union sponsorship of card parties, dances, dinners, theatricals, and concerts. The extent to which such activities have been launched depends upon the vitality of the union. Some of the more progressive organizations, especially in the C.I.O. ranks, have an elaborate calendar of events for their members and their families. In the public parks the local union baseball team will compete with the locals of the same or neighboring cities. Dances are held to augment benefit funds or to assist labor struggles. Card parties will be arranged. The union's headquarters will be equipped with pool and ping-pong tables as well as ample lounging facilities for members who gather there to discuss the problems of the day. In isolated mining camps the community social center is the union hall. Among the more skilled union groups social events are apt to be of a more expensive character. The banquets and dances held in the larger hotels are patterned after the social activities of the wealthier classes.

Conspicuous examples of well-rounded recreational programs obscure the backwardness of most unions in this respect. Some organizations have been content, either through lack of finance or initiative, to hold their occasional meetings in poorly kept, rented quarters and have allowed their officials to treat unionism as a strictly business venture. Songs at union mass meetings would be considered undignified, dramatics too "high-brow," and recreational and sports activities costly and unessential side lines. To some extent the fact that company unions had so largely concerned themselves with social pursuits no doubt contributed to the feeling that the union, in contrast, should keep aloof from similar frivolous activity.

WORKERS' EDUCATION

Although the American public school system itself is in large measure the result of nineteenth-century labor agitation for free schools, its relationship with the trade-union movement has not been close. The traditional public school curriculum has yielded to pressures for vocational training and for college preparation, but not to pressures from labor circles. The policies of boards of education have tended to reflect the viewpoint of business leaders. Trade-unionism is commonly considered a "controversial subject" which should not plague tender and immature minds. The school system should be kept out of partisan struggles—"should not lend itself to propaganda." Such scruples, however, did not lessen the emphasis laid upon the calculation of compound interest or upon the reading of historical legends about the great industrial leaders, who "working, under a system of individual initiative, accomplished wonders." These heroes of America's economic battles were to be immortalized in the history books. Unions, if mentioned at all, were to be associated with strikes and riots so that no one could escape the implication that these organizations harbored nothing but agitators and hoodlums. The function of the public school was thus conceived to be one of turning out good little capitalists who would preach and practice thrift, have a sound knowledge of bookkeeping, respect property rights, salute the flag, and who would never do anything so un-American as to form labor organizations, or question the status or benevolence of the great corporations.

As organized labor grew in strength it came increasingly to appreciate the need for supplying to its members a clearer knowledge of its objectives through the establishment of a workers' education movement. This movement was regarded as serving several purposes: to increase the solidarity of labor, to educate it to take an intelligent part in the formation of social policy, to recruit new leadership from the younger members, and, most of all, to give impetus to the drive of the more progressive unionists to change union policies. Within each organization the more conservative members have been willing to accept the profit system without question, "as long as labor got its share." The sponsorship of workers' education has been assumed by the younger and more progressive members who have felt that reform movements should be discussed in union meetings and in greater detail in union classes where unemployment insurance, minimum wages, and labor's political policies are typical discussion questions.

The Executive Council of the American Federation of Labor has never quite made up its mind as to its attitude toward the workers' education movement. During Gompers' administration the Federation was chiefly concerned with resisting socialist influence, Gompers regarding the trade-union

as a purely educational center for labor which should not concern itself with partisan politics. The growth of the workers' education movement in Europe, however, stimulated continued agitation for workers' classes in the years immediately following the War and finally culminated in the formation of the Workers' Education Bureau as a co-ordinating agency.

A number of resident labor colleges were also established for the training of labor leadership. The first of these, Brookwood, in Katonah, New York, was liquidated in 1937 after sixteen years of service. The stormy history of this college illustrates the existing conflict of labor opinion. Formed in 1921, it early secured the support of the garment unions, the progressive wing of the miners, and leaders in such crafts as the railway clerks. The established unions resented the critical attitude of graduates of this college who habitually disturbed the peace and quiet of union meetings by finding fault with union policies. Reactionary labor leaders began to question the advisability of supporting such an institution and even went so far as to plant a spy in the college. As a result of his report the Federation repudiated Brookwood. At the same time Brookwood was having troubles of its own which led it to discharge a faculty member alleged to be a communist. In 1933 another crisis developed when A. J. Muste, joined by several faculty members and nineteen students resigned from the college. The difficulties at that time arose from the fact that Mr. Muste was attempting to make the school an agency for fostering the increasingly militant ideal of the Conference for Progressive Labor Action. From 1933 to 1937 Brookwood's academic life was much more calm, but its financial difficulties finally became so acute that it was forced to close.

Another workers' education venture, Commonwealth College located at Mena, Arkansas, was founded in 1925 by W. E. Zeuch, who chose an agricultural setting in order to make the institution more nearly self-supporting. Commonwealth, like Brookwood, has suffered from heated internal disputes as well as from attacks by labor reactionaries. It has, however, managed to survive and is doing useful work.

A number of other labor colleges have been established by political groups within the labor movement. The Rand School of Social Science in New York City, dominated by socialists, was launched in 1905 to foster interest in labor and socialist thought. As early as 1911 this institution organized a workers' training course. During the War it was the victim of numerous raids and investigations. The postwar split within the Socialist party brought the institution under the domination of the most conservative wing in the party. Its educational work continues, though on a less vigorous basis than before.

Competing with the Rand School are the workers' schools operated by

the Communist party, the largest of which is located in New York City. These institutions have sought to expound the doctrines of Marx and of Lenin and to prepare the potential leaders of the left-wing elements in labor. The workers' school movement is conceived of "as a fighting instrument," and not as a "neutral academy standing between various tendencies." The workers' schools have attracted a wide following. Another institution, the Work Peoples' College, established by the I.W.W. at Smithville, a suburb of Duluth, Minnesota, is dominated by Finnish groups and has tended to emphasize syndicalist doctrines.

The Workers' Education Bureau is the official spokesman of the American Federation of Labor on matters pertaining to workers' education. Although launched in 1921 by the progressives, after a decade it was dominated by the conservative forces in the Federation. Its secretary, Spencer Miller, Jr., sought from the start to reconcile the diverse elements, but this proved impossible as the Federation became more outspoken in its hostility toward radicalism. The conservatives in the Federation regarded labor colleges as responsible for the development of the radical elements within the movement. In an effort to combat radicalism the Bureau was reorganized by the American Federation of Labor convention in 1928. A three-year conflict between the progressive and reactionary forces within the Bureau finally ended in a purge of the more militant groups in 1931. Since then the Bureau has tended toward the conservative. Its secretary has issued a number of books and pamphlets, has developed institutes in which unionists discuss labor problems, has undertaken the development of extension work for trade-unionists through a number of state universities, and has sought to stimulate the formation of local classes. Although the Bureau has by no means become an agent for the more reactionary elements of the Federation, it has suffered from the withdrawal of support from some of its more progressive affiliates which have entered the C.I.O., and from the vigorous growth of rival education agencies.

The Affiliated Schools for Workers, the chief competitor of the Workers' Education Bureau, is a federative effort largely developed through the energetic work of Hilda W. Smith, who came into the workers' education field as the director of the Bryn Mawr Summer School, a summer institute for women workers. The work of the Affiliated Schools was at first confined to furnishing guidance and study materials to a number of summer schools, primarily for women, which were developed in other centers. This program was expanded to include winter classes for both men and women under the guidance of a staff closely identified with the Affiliated Schools through personal contacts. Many C.I.O. groups have become informally allied with the Affiliated Schools although the latter's work is not confined to this section

of the labor movement. It is now called American Labor Education Service, Inc.

In 1934 Hilda Smith transferred her activities to Washington as head of the Workers' Education Project of the federal government. With the aid of unemployed teachers in a number of co-operating states, she developed a substantial program of workers' education. Although the program has been badly handicapped by the antilabor bias of many state directors of education and superintendents of schools, it has been an important factor in the rapidly growing labor-college movement.

Labor colleges have had a long but rather precarious existence in the United States. Usually they are formed when a group of enthusiasts for workers' education establish classes in co-operation with other interested unionists. Sometimes these classes have been held in conjunction with union meetings, but more often they have drawn their students from a number of unions with the endorsement of the central labor union of the city. Classes are offered in such subjects as economics, trade-union problems, public speaking, parliamentary law, and labor dramatics. An open forum is often an added feature. Some of the more aggressive unions have not only assisted such local labor colleges but have also formed their own educational programs. The most noteworthy of these is the International Ladies' Garment Workers' Union, which has organized a wide variety of classes including many of general cultural interest. On the other hand, a number of unions have limited their educational program to technical and vocational classes.

Currently the workers' education program reflects varying aims. Many old-line unionists have disapproved of any formal program of workers' education since they feel that the free discussion characteristic of most union meetings is adequate training for union work. They maintain that organizers are born and not trained and regard education as fostering radicalism. Those active in the education movement, however, have several basic objectives: (1) to train their students in the methods of organizing and conducting unions; (2) to secure the adoption of progressive union policies; (3) to assist workers toward a more intelligent appreciation of alternative social systems. Despite the hostility of union leaders toward communists and often toward socialists, the American trade-union movement has by no means taken its final stand on controversial issues. Discussion in workers' education classes today frequently centers about established union policies and the possibility of aligning the union movement with more radical groups.

The workers' education movement has also served to widen interest in the trade-union movement. In some centers it has included workers who were not in trade-unions and it has often been able to assist organizing campaigns. Generally workers most active in it have been drawn from the newer union groups.

THE LABOR PRESS

Another important educational medium employed by labor is the press. No union is complete without its official magazine; each important city has one or more labor newspapers; the various labor federations have their organs. The columns of these various publications are usually filled by releases of the labor press services, such as Federated Press and the International Labor News Service, which interpret the national and international news of the day from the point of view of the labor movement. Many of these papers are supported out of union dues and are sent to each paid-up member as a means of maintaining his active interest in the organization.

The quality of much of the material is unfortunately not as noteworthy as its quantity. Although many of the journals are too dull for anything but the wastebasket, the improvement that has appeared in the last ten years suggests that this instrument is today more effectively employed.

One of the most striking recent developments in labor publications has been the growth of the labor tabloid, such as the *Peoples' Press*, which features labor pictures and short direct stories of labor disputes. This type of paper is especially effective in strike situations where it is distributed to raise the morale of strikers and to present their side of the dispute to the community. The C.I.O. especially has employed this technique.

An illustration of an effective but conservative labor journal is *The Journal of Electrical Workers and Operators*, published by the International Brotherhood of Electrical Workers and Operators. Well printed and well illustrated, it is a forceful organ of opinion. In its pages one finds general educational articles, appeals for support of the union, news of the movement, and readers' comments. In its issue of May, 1938, for example, it features an article on the T.V.A. under the caption: "Great government corporation has brought collective bargaining to peak of efficiency. A. F. of L. unions have projects virtually 100 per cent organized, and are doing business on sound basis."

A page is devoted to the union label of the electrical workers: "The I.B.E.W. union label has become a thread of unity throughout the widespread far-flung electrical industry." The New York regional director of the National Labor Relations Board is harshly condemned as "reeking with favoritism"—for a decision rendered against the union. The report of the Federal Communications Commission urging stricter regulation of the telephone industry is sympathetically briefed. Space is given to technical materials on compound direct-current motors and amateur radio. Presented also are the minutes of the semiannual executive council meeting at which 116 brothers were pensioned.

Editorially the journal condemns the Labor Relations Board for favorit-

ism toward the C.I.O. and applauds the "great advances" made by the Electrical Workers' Union in organizing industrial plants. On the women's page women's auxiliaries are heralded as the secondary line of organized labor. There, too, appear propaganda for the purchase of union-made articles, letters, social news, and recipes. Letters from union correspondents are perhaps the most interesting feature of the magazine. This open forum includes stories of local disputes, condolences to families of deceased members, new suggestions for union undertakings, reflections on economic conditions, and good-natured jibes and doggerel:

Are you an active member, the kind that would be missed,
Or are you just contented that your name is on the list?
Do you attend the meetings, and mingle with the flock,
Or do you stay at home and criticize and knock?

The work of the union journals is supplemented by weekly labor newspapers, most of which are definitely focused on the political scene as well as upon trade-union development in a particular city or county. Serving these newspapers are the national press agencies of the A.F.L. and C.I.O. as well as a number of independent services. The lack of initiative on the part of local groups has caused most labor newspapers to lean heavily upon these press services, which in turn reflect conservative, middle of the road, or radical attitudes according to their sponsorship.

Since the advent of radio, two labor stations have been established, WCFL of the Chicago Federation of Labor and WEVD, launched by New York socialist groups in honor of Eugene V. Debs, their one-time leader. Although union leaders are paying increased attention to radio broadcasting, their speeches have thus far been too stilted and obscure to compete successfully with the entertainment on other wave lengths.

UNION BUSINESS ENTERPRISES

Characteristic of labor organizations has been the urge to own property. In the nineteenth century this frequently led to co-operative workshops through which workers sought to abolish the wage system. But few of these have survived. The desire for experiments in business ownership has periodically developed as union treasuries have grown and as members have sought to use their collective power to better their economic welfare. During the 1920's the movement for "trade-union capitalism" was led by enthusiastic but inexperienced officers of some of the more prosperous labor organizations who sought to buy controlling shares in certain banks, insurance companies, and office buildings or even an occasional mine or hotel property. Some enterprising organizations erected apartment houses for their members. The more

soundly conceived and ably administered of these endeavors still survive, but the greater portion proved unsuccessful. The majority of the banks failed. The surviving features of the movement include several substantial labor insurance companies and a few banks and housing projects. The most substantial undertakings are those sponsored in New York and Chicago by the Amalgamated Clothing Workers.

The failure of many of labor's business undertakings cannot be dismissed with the statement that their managers were incompetent and that union members and leaders were overoptimistic. Both of these factors were important but, underlying the efforts was also the desire of well-entrenched, high-salaried executives of prosperous unions to extend their power and prestige. The results were disastrous save in those rare instances where the union possessed exceptional business leadership. Since the collapse of 1929 little has been heard of the movement that would have unionism buy out the capitalists and solve the labor problem by establishing an identity of interests. Those unions which still believe that a shift in industrial ownership and control is the next goal after the establishment of collective bargaining are working for the extension of national economic planning and government-ownership or are building consumers' co-operatives. Both the A.F.L. and the C.I.O. have endorsed the co-operative movement but widespread local support of the movement by local unions has not recently been shown.

LABOR AND THE CONSUMER MOVEMENT

The labor movement has long been aware that its members are consumers as well as producers. For many years, union conventions have passed resolutions against profiteering, against buying the products of nonunion manufacturers, and often against the purchase of imported goods. Similarly other resolutions have endorsed union-made merchandise and have supported the consumers' co-operative movement. Much ado has been made in labor circles over the "economy of high wages" which, it is claimed, would not only defeat depression by creating additional purchasing power but would guarantee to the buyer that his purchase had not been scamped by inefficient, poorly paid workers.

Much of labor's interest in its problems as a consumer has remained in the resolution stage. The impelling circumstances which draw a group of men and women into a union center about the sale of labor. The immediate and selfish aim is for higher wages. If other ends can incidentally be furthered, they are considered laudable but secondary. Moreover, in the catch-as-catch-can battles over increasing the pay and shortening the hours, the purchasing power of the pay envelope often seems a remote consideration. The trade-unionist is caught up in an industrial civilization which numbs its victims by

high-pressure advertising. His tendency is to conform to the patterns of behavior thrust upon him by the radio and the press. Since his immediate search is for the income to maintain his cherished living standard, he is not likely to question the quality or prices of the goods or services that are offered him. Only by slow stages and in the face of bitter resistance has the union movement interested its members in their own protection as consumers.

The transition is not easily made.

When the unionist looks at his problem from the consumer point of view, he is often confronted with a dilemma. Should tariff-protected glove workers favor a high protective tariff? Should glass-bottle workers campaign against the sale of beverages in cans? Should printers, bill posters, and photoengravers fight against an extension of the volume of competitive advertising? Should workers employed in making paper-soled shoes seek to foster the sale of their product? Should sellers of industrial life insurance campaign against more economical forms of insurance? Should railroad employees seek higher rail rates?

In most of these cases the producer interest takes precedence over the consumer interest. The unionist associates himself in the first instance with his industry and reflects its point of view. Maritime unions will have little protectionist sentiment. Unions in protected industries will have much. Workers employed in the making of products of doubtful social value will champion their wares. And yet in the total picture, the union movement on particular issues will take a stand which is more progressive than is suggested by the selfish attitude of some of its constituent parts.

On the consumer front labor has more or less actively supported three efforts: the union-label movement; the consumer-testing movement; and the consumers' co-operative movement.

The first of these, the union-label movement, has received by far the most assistance. Under the plan, articles made with union label as to be marked with a union label, issued either by an international union or jointly by a number of co-operating unions employed in the field. Control over the use of the label remains in the hands of the union or unions concerned and union members are cautioned to look at their hats, shoes, tobacco, or other purchases to ascertain that the label is present. In the case of stores or barbershops, for example, the union card is displayed as evidence that a collective contract has been signed with union employees. In 1909 the American Federation of Labor established a Union Label Trades Department to foster and co-ordinate the work of the affiliated labor organizations in spreading the use of the union label.

The purpose of the union-label movement has been set forth by I. M. Ornburn, Secretary-Treasurer of the Union Label Trades Department: "If members of Labor Unions, their families and friends will patronize only

those firms that sell Union Label goods and employ Union services, we may confidently expect a steady growth for Labor unions; but if we fail to reciprocate by consuming the Union-made goods processed by our own friends, we will lose the high standards we established. We must show results to unionized industry.”⁴

Use of the union label has been urged through exhibits in union halls, in speeches at union meetings, and by the distribution of directories of union-label products. Several states have authorized Union Label weeks. In a number of fields, such as tobacco, the union has been assisted in its campaign by sympathetic employers who have wished to expand their business with union assistance. Perhaps the greatest success has been encountered in the printing field, where skillful propaganda has made union members exceedingly conscious of the presence or absence of the union label.

The union-label movement has had serious limitations. Until recently union-label goods were often difficult to obtain in many fields because of the predominance of nonunion workers in an industry. Even now the conflict between A.F.L. and C.I.O. unions works against effective co-operation in the purchase of union-made articles. Another problem has been that of defining a union-made product. Is a dress made by union workers of nonunion cloth a union-made garment? Or if a union butcher sells steak, bought from a non-union packer, is a union member justified in buying it? Quite apart, however, from this problem has been the tendency of many union-label companies to charge higher prices for their goods. To some degree this was to be expected since the employers in question were complying with better labor standards. Yet there has always existed in the union-label movement a tendency on the part of co-operating employers to charge what the traffic would bear.

Supplementing the work of the union-label movement in fostering better labor standards have been the activities of the Consumers' League and of the League of Women Shoppers. The former organization has sought to enlist sympathy for protective labor legislation and the minimum wages. It has also done useful work at times in turning consumer patronage toward goods produced under healthful conditions and above a minimum wage standard. The League of Women Shoppers, a newer organization, is of a more militant character. It has assisted organizing campaigns by calling upon consumers to boycott products of factories whose workers are on strike for fair labor conditions. Its members have also joined in picketing shops seeking to exploit their employees. Its members have not shunned publicity as to their activities on behalf of labor and they have frequently threatened to withdraw their patronage of retail stores which tolerate unfair labor conditions.

⁴ Release of the Union Label Trades Department, quoted in *The Bakers' Journal* August 27, 1938.

CONSUMER STANDARDS MOVEMENT

A second type of effort designed to assist in the maintenance of fair labor standards has been the emergence of Consumers' Union of United States, formed in 1936 to provide "a technically competent, unbiased service for consumers which would be controlled by its members and responsive to their needs." As a phase of this effort, monthly reports are sent to more than 90,000 members concerning the labor standards under which goods are produced as well as the quality standards of the articles. Thus such articles as shoes, electric stoves, and auto tires will be rated on the basis of their test performance as well as the labor standards of their manufacture. Some attention is also given to the enactment and enforcement of consumer protective legislation and to the creation of a less wasteful marketing system. The organization itself keeps aloof from business undertakings in order to assure its freedom from commercial bias.

The service of Consumers' Union has been widely used by local union groups and promises to become an important medium through which members of organized labor as well as other consumers may advance their living standards.

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QUESTIONS

1. Does the welfare activity of trade-unions strengthen or weaken them in their efforts to secure effective collective bargaining relationships? Explain.
2. What appears to be the future of union insurance and benefit plans? Will the entrance of government tend to eliminate this phase of activity?
3. How do you account for the vast difference between unions in the extent of social, beneficial, and recreational activity undertaken? Is it a question of initiative?
4. Is there such a thing as an "unbiased" approach to the study of labor problems which might form a part of the public school curriculum?

5. Should the basis of a workers' education curriculum be to teach a worker "how to think" or "what to think"?
6. Compare the news reports of a number of papers (including if possible one or more labor papers) on a recent industrial dispute. Does the result suggest that the public receives unbiased information?
7. Compare the attitude of various newspapers on current labor legislation.
8. Indicate the relationship between the trade-union and the co-operative movements. To what extent are their aims similar?
9. How do labor's interests as a consumer conflict with labor's interests as a producer?

20 LABOR IN POLITICS

INTRODUCTION

THROUGHOUT much of its history, organized labor in the United States has been concerned with political activity, and on occasion it has even been primarily preoccupied with politics. This concern with politics, however, has been somewhat obscured by the failure of the American labor movement to produce a durable political party with a labor base and orientation, and by the fact that, in general, American workers have displayed far less political awareness as workers than has been the case abroad. There has only been one significant organization since the beginning of labor organization in the United States that has consciously repudiated all political action. This is the Industrial Workers of the World, which represented largely the interests of migratory, casual, and unskilled workers. Those who view the active participation of labor in politics with surprise or regret should recall that the American labor movement produced the first labor parties in the world at the close of the 1820's, and that the labor movement has never been wholly divorced from politics since that date. In contrast to European developments, however, it must be made clear that its political activity in the United States has been less intense and more sporadic.

American labor has participated in politics in three ways: (1) through frankly revolutionary parties which professedly express working-class aspirations and draw their membership and voting strength from among workers;

(2) through independent electoral politics, either local or national, in the form of labor, or farmer-labor, parties, or by affiliation with independent third parties; (3) through what is generally called nonpartisan political action operating in terms of pressure politics and the lobby. The last, which is perhaps more accurately viewed as bi-partisan political action, should be recognized as an extension of the techniques of collective bargaining into the political field. Here, directed, if not controlled, labor votes are exchanged for favorable governmental policy measured in legislation, administration and administrative personnel, and the courts. Since the American Federation of Labor has dominated the organized labor movement, this third type of political behavior has predominated.

NONPARTISAN POLITICAL ACTION

Position of the A.F.L. From its very inception the American Federation of Labor has consistently kept clear of independent political action, placing most of its faith and emphasis upon economic activity. It has, until very recently, even regarded with much suspicion state and federal economic legislation, preferring to depend rather upon the "economic legislation" procured through collective bargaining, *i.e.*, the trade agreement. As a matter of general policy the A.F.L. has expressed a willingness to resort to politics only when economic methods are of no avail or to secure gains for working-class elements unable to bargain collectively. When the A.F.L. was founded several influences were at work which shaped this position of the organization. The more important of these were the developments in the British trade-union movement, the depressing results of the efforts of the National Labor Union and the Greenback Labor party to establish a significant labor party (drawing support also from farmers and petty bourgeoisie), the rivalry of the socialists, the disruptive consequences of the game of politics played within the Knights of Labor, and the failure of most of the labor legislation from the 1860's on to secure any real gains for the workers.

Early in its existence the Federation took a decisive stand upon the question of politics, declaring in its constitution that "Party politics, whether they be Democratic, Republican, Socialistic, Populistic, Prohibition, or any other shall have no place in the Conventions of the American Federation of Labor." Earlier, in 1887 the convention declared that the launching of political programs by labor means "extravagant expenditures of strength" and energy in affairs which are not conducive to its well-being. Ten years later the convention of the A.F.L. declared its opposition to party politics and urged political action, resolving

. . . That the American Federation of Labor most firmly and unequivocally favors the independent use of the ballot by the trade-unionists and workmen, united

regardless of party, that we may elect men from our own ranks to make new laws and administer them along the lines laid down in the legislative demands of the American Federation of Labor, and at the same time secure an impartial judiciary that will not govern us by arbitrary injunctions of the courts, nor act as the pliant tools of corporate wealth.

Application of A.F.L. policy. The political strategy of the Federation means that there are four critical points where the workers must bring pressure if they are to condition governmental policy. These are in the nomination of candidates and in the formulation of the legislative programs of the existing major parties; in elections, where endorsed candidates can be given labor's vote; in the passage of specific legislation; and in the process of administration. With the growth of executive agencies and administrative law, this last area of political activity has acquired major importance, although it has not yet received the consideration from organized labor which it merits. Operations at these four points involve a wide range of activities running from the formulation of a legislative program and participation in primaries to attempts to affect the membership of administrative boards and the elaboration of their policies. Obviously, all these activities have not received equal emphasis or attention. They have, however, one element in common, and that is the exchange of votes for programs, principles, and politicians favorably disposed to labor. The employment of the technique of collective bargaining in the field of politics is not surprising in a wing of the labor movement in which business unionism dominates. It implies, too, that the existing major parties are not regarded as so tied to the interests of the employers that they are not responsive to payment from other quarters in the common coin of politics—votes.

The simplest statement of the position of the A.F.L. is found in its familiar slogan: "Stand faithfully by our friends, Oppose and defeat our enemies, whether they be Candidates for President, for Congress or other offices, whether executive, legislative, or judicial." In the final analysis, the validity of this strategy of reward and punishment rests upon the evidence that labor gains more by pressure for specific measures and the election of its friends to office than by any other type of political behavior. The arguments in defense of the Federation's official position are many and have considerable weight.

Defense of A.F.L. position. It has been argued that the power of party loyalties, the structure of our complex party institutions, the character of our federal system and the nature of our governmental theory and functions all militate against the development of an independent labor party and favor nonpartisan action. The primary system, for example, invites participation in the politics of the major parties in so far as it theoretically makes possible

the nomination of prolabor candidates. The tradition of our two-party system—in part mythical, for the United States has never had a two-party system in a pure form—places a heavy disability upon any party which bears the name “third party.” The power of old party ties, together with the type of labor consciousness which distinguishes the American working class, prevents the emergence of a “labor vote” in national politics. There is reason to assume that most workers cannot be depended upon to throw their support to working-class as distinguished from middle-class policies and political leaders. The major parties, moreover, are so free of theoretical baggage and so dominated by opportunistic considerations that they consciously direct their appeals to any class from which they can win votes. If labor enters independent electoral politics, it must make its attack upon forty-nine political fronts, that is, the federal government and the forty-eight state governments. Success in the area of federal politics might be nullified by defeat in the states and in the courts. Moreover, as Professor Selig Perlman has observed, “the question of a political labor party hinges, in the last analysis, on the benefits which labor expects from government.” Until recently it could expect very little. The power of the courts and the traditional limitations on the exercise of economic functions by government set up by the state and federal constitutions all seemed to justify the conclusion that the working class should not divert “even a part of its energy from trade-unionism to a relatively unprofitable seeking of redress through legislature and the courts.”¹

Gompers and the A.F.L. leadership have always maintained that the weak numerical strength of organized labor, even if it were solidly united behind a given party, would not necessarily be a decisive factor in elections. The point has also been made that the creation of a labor party would have divisive rather than unifying consequences in forcing workers to take clear-cut positions upon highly controversial questions. It would alienate many trade-union members who were tied to existing political machines, and it would crystallize the hostility to labor in the major parties. Implied in the A.F.L. argument is the conviction that noneconomic interests divide men, so that those who stand together in the trade-union movement fall into diverse and sometimes opposed groups on the basis of religious, social, and political interests. Since employers would regard an independent labor movement as more heretical than collective bargaining, because it would be a threat to existing political controls, there would be greater opposition to labor generally.

Deeply rooted in A.F.L. philosophy is the conviction that labor's important gains throughout history are to be ascribed to the use of economic

¹ Selig Perlman, *History of Trade Unionism in the United States*. The Macmillan Company. New York. 1922. P. 285.

weapons. Labor, it is argued, wants essentially to be let alone to pursue its program, and the effect of successful labor politics would be disastrous to the trade-union movement. Extended social reform legislation would destroy the need for trade-unions and weaken the workers' self-reliance. Moreover, the service state requires a great bureaucratic machine which, with the growth of its powers, may curtail rather than extend liberty. Under state ownership of basic industries or utilities labor would also suffer because the workers, it is assumed, would lose the right to strike.

Early nonpartisan labor politics. Nonpartisan political behavior is, of course, neither original nor unique with the A.F.L. It is the policy of all pressure politics and the characteristic political technique of employers and business interests. Its use by labor goes back to the third decade of the nineteenth century, when a convention of New England artisans, workers, and farmers proposed that certain legislative gains be secured by the selection of friendly candidates. The agrarians,² under the leadership of George Henry Evans, tried to get politicians to endorse their demands in exchange for votes. Other workers' organizations in the 1840's and 1850's sought to attain their objectives by securing pledges from candidates for political office regardless of party. The Eight-Hour Leagues³ of the 1860's utilized the lobby and the pledge to secure legislation for a shorter hour day. The Knights of Labor⁴ utilized similar techniques, and its leadership, until the period of the decline of the Knights, attempting to keep partisan politics out of the Order, fought the establishment of an independent labor party. The Federation of Organized Trades and Labor Unions of the United States and Canada,⁵ the predecessor of the A.F.L., maintained a "legislative committee" which attempted unsuccessfully to bring pressure upon the two major parties in connection with labor questions and lobbied for a federal eight-hour law.

Scope of A.F.L. activities. The political policy of the A.F.L. involves a fairly constant and wide range of activities by the Federation itself and its constituent organizations in municipal, state, and national politics. The energy expended in these activities, of course, is not the same for all periods, issues, organizations, and political areas. Normally the intensity of political action is pitched higher in periods of depression, when labor's economic weapons are not very effective. In such periods the demands even of conservative unions and leaders take on a more radical coloring. Thus the A.F.L. leadership in 1934 asserted that "when private business is not able to resume its functions then society is forced to take over the means of pro-

² See pp. 146-148.

³ See p. 152.

⁴ See pp. 154-157.

⁵ See pp. 163-164.

duction." The intensity of political action is also tremendously increased when the courts, through the issuance of injunctions, rulings in damage suits, and the invalidation of labor legislation of one kind or another,⁶ place in jeopardy virtually all the significant operations of trade-unions.

Work of A.F.L. units. It is, of course, difficult to draw a clear-cut line between the lobbying activities of the A.F.L. and its participation in political campaigns. The same bargaining techniques are involved in both. With the great amount of state legislation affecting labor, the state federations play an extremely important role in lobbying. It is their function at the state capitals to promote legislation favorable to labor, to block bills which are harmful, and to bring pressure to bear for favorable administrative appointment and rulings. No less concerned in these matters are the unions themselves, which may exert pressure in addition to that of the state federation. In municipal politics the central labor unions engage in similar functions. The state and local units of the Federation also engage in electoral politics not only by participating in elections but also by entering into the primary conflicts and by drawing up programs. The state federations and central labor unions are not only preoccupied by such politics, but, because they can control votes, may, together with some unions, become intimately tied to local and state machines. Sometimes they become part of them. In New York A.F.L. units have played politics with the state and local democratic machines. In New York City, Tammany for years depended upon solid blocks of labor votes from many unions. In Jersey City, one of the cogs in Mayor Frank Hague's terribly effective machine was at one time the building trades-unions. A.F.L. units have at different times been the key elements in the structure and success of local machines in Philadelphia, Kansas City, Chicago, San Francisco, and elsewhere.

The state federations. The pattern of political activity followed by the state federation is essentially the same as that of other local units and of the Federation itself. It passes upon candidates for office—less frequently upon candidates for nominations—in terms of their past records and appraises their stand upon pending legislation. Candidates are asked to state their positions upon proposed legislation, and the replies, together with past voting records if they exist, provide the basis for rejection or endorsement. The decision to endorse is followed by appeals to affiliated organizations urging election. Often the "friends of labor" who are endorsed will be aided by statements and speeches made possible by the collection of special funds. In New York State, to take a specific example, in 1935, the state federation tabulated the votes of senators and representatives on important labor bills dealing with

⁶ See Book V.

unemployment insurance, extension of workmen's compensation, limitations on injunctions in labor disputes, increase of the school attendance age, and the restriction of yellow-dog contracts. It urged workers to participate in the primaries in order to nominate candidates who favored labor's legislative program.

The weaknesses in this procedure are obvious. Roll-call votes are not always available, and answers to attitude questionnaires may be evasive. While candidates with especially vulnerable records can be detected—and perhaps defeated by a mustered labor vote—those supported may not fulfill their promises when once elected. It is also possible for canny politicians to "vote right" on enough issues, even when they are essentially unsympathetic to labor, to be able to lay plausible claim to labor support. More difficulties emerge when labor seeks to secure the enactment of its legislative program through the support of its elected friends. Bills may be buried in committee, halfheartedly supported, or defeated without a record vote. When the labor lobby is successful in pressing the measure to a record vote, one house may enact the bill with the understanding that the other house will defeat it. A bill may be so amended that its vital features are eliminated by the time it becomes a law. Sometimes bills which start out as labor measures become transformed into antilabor laws. After a bill is passed it may be vetoed by the executive, or, if it becomes law, it may be declared unconstitutional by the courts or vitiated by faulty administration.

Wisconsin state federation. Among the more successful of the state federations is that of Wisconsin. Organized in 1893 in order to create greater unity in union organization and in securing favorable legislation, the federation has presented a program of legislation to every session of the legislature every year since 1895. Machinery for the formulation, presentation, and promotion of labor laws developed slowly. In 1915 the federation began to utilize local legislative committees in pressure and electoral politics, five years later shifting this work to local "farmer-labor leagues." Still another device has been employed by the federation in the annual legislative conferences made up of delegates from local unions and meeting early in the legislative session. The legislative conferences are important largely as "an expression of organized labor's strength at a strategic time, and as a means of pointing out important issues in the Federation's programs to constituent unions."⁷ The Wisconsin state federation, which has gone very far in the elaboration of legislative and lobbying machinery and in working with other pressure groups justly claims much credit for the advanced labor legislation of the state.

⁷ Gertrude Schmidt, "History of Labor Legislation in Wisconsin," p. 32. University of Wisconsin, Ph.D., manuscript thesis.

Lobbying. The A.F.L. recognized the importance of lobbying in national politics with the appointment of legislative representatives to Washington in 1895. Since then a regular legislative committee made up of individuals who devote all their time to this work, has been maintained at the capital. In 1921 the A.F.L. perfected its labor lobby by organizing a Legislative Conference Committee which meets monthly during Congressional sessions and is composed of thirty or forty members. Concern with national legislation also led the Federation to transfer its headquarters to Washington in 1897. In the following year the Executive Council itself lobbied for labor measures, calling as a body upon the President and the Speaker of the House. Little success attended these efforts of the Federation. In 1902 Representative Littfield of Maine, Chairman of the Judiciary Committee, for example, refused to aid the Federation in securing the exemption of labor unions from the provisions of the Sherman Antitrust Act. At the same time the lobby of the National Association of Manufacturers was operating with much success at Washington to defeat labor legislation such as the eight-hour and anti-injunction measures of 1902, and in the following year it turned its attention to elections to insure the defeat of prolabor senators and congressmen. During these years the use of the injunction against labor was becoming more frequent, contempt cases were being pressed against labor leaders, and damage suits were being brought against unions.

Labor's Bill of Grievances. In defense the Federation was forced into wider and more energetic political action. In March, 1906, representatives of 118 international unions met with the Executive Council of the Federation and drew up Labor's Bill of Grievances, consisting of the following major demands: an adequate eight-hour law for federal employees; protection of workers from competition with convict labor; restriction of immigration and exclusion of the Chinese; laws to safeguard the rights of seamen; exemption of labor from the provisions of the Sherman Act; prevention of the use of the injunction in labor disputes; restoration of the right of petition to government employees; the appointment of a House Committee on labor truly representative of labor's interests. When Labor's Bill of Grievances was presented to President Theodore Roosevelt and the presiding officers of both houses of Congress, it was coolly disregarded by Congress.

Electoral activities. This Congressional indifference led the Executive Council to enter vigorously the 1906 campaign in order to defeat labor's enemies. The convention of that year declared: "We will stand by our friends and administer a stinging rebuke to men or parties who are either indifferent, negligent or hostile; and, wherever opportunity affords, secure the election of intelligent, honest, earnest trade-unionists, with unblemished,

paid-up union cards in their possession.”⁸ The Executive Council urged that local unions and labor bodies work for the defeat of hostile legislators, that they support friendly candidates, and, where the old parties remained deaf to labor’s demands, that they nominate a straight labor candidate. Two significant steps were taken: the raising of funds, and the election of a Labor Representation Committee to be in charge of the campaign. The name of the latter was later changed to the Nonpartisan Political Campaign Committee. With Gompers dominating it during his lifetime and President Green since, this committee co-ordinates and directs the political work of the Federation and has charge of national endorsements.

Throughout its history the A.F.L. has more frequently endorsed the tickets and platforms of the Democratic party than those of the Republican. This, however, is no indication of party partisanship. It merely reflects the federation’s partisanship to principles and the “friends of labor,” for the Democratic party and its candidates were more frequently sympathetic to the A.F.L. program and demands. In 1924 the shabby treatment given the Federation by the two major parties, and the candidacy of La Follette, whose friendship for labor was beyond question, led the Nonpartisan Political Campaign Committee to endorse the La Follette-Wheeler ticket. It made it clear, however, that this did not mean “a pledge of identification with an independent party movement or a third party, nor can it be construed as support for such a party group or movement except as such action accords with our nonpartisan political policy.”

A.F.L. achievements. The A.F.L. has pointed with pride to the gains won by its policy since 1906 in terms of the increase of members of Congress holding paid-up union cards and of its striking legislative achievements. The latter, according to the Federation, included the establishment of the Department of Labor in 1913, the declaration that labor is not a commodity in the Clayton Antitrust Act,⁹ the La Follette Seamen’s Act of 1915, and, in later years, the limitation of immigration, the abolition of the yellow-dog contracts,¹⁰ the Norris-La Guardia Anti-Injunction Act,¹¹ and the Byrnes Act abolishing interstate strikebreakers.¹² Since 1932 the A.F.L. has thrown its weight behind wage, hour, and social security legislation and has supported the creation of labor relations boards.¹³ Of course, the Federation’s program of limited objectives has received support from nonlabor groups, and the A.F.L. cannot claim sole credit for this and other legislation. Yet

⁸ Quoted in Mollie Ray Carroll, *Labor and Politics*. Houghton Mifflin Company. Boston 1923. P. 46.

⁹ See Book V.

¹⁰ See *Ibid.*

¹¹ See *Ibid.*

¹² See *Ibid.*

¹³ For this legislation, see *Ibid.*

the gains of the nonpartisan political policy have, in the eye of the Federation's conservative leaders, completely justified its use. Lewis Lorwin has pointed out other advantages of A.F.L. policy, arguing that it screens political disunity, affords local political influence to union leaders, and "is an effective block against the intellectuals and other middle-class people who might climb to the top in political parties and overshadow the trade-union officials."¹⁴

Weakness of nonpartisan politics. Even if one grants the validity of the underlying assumptions of nonpartisan politics, it must be admitted that it has a basic weakness in so far as it operates to divide the workers at the polls. Writing of the 1932 campaign, Dr. Lorwin remarks that "each political party had a labor bureau managed by a prominent union official. Members of the Executive Council of the Federation were out campaigning for opposing presidential candidates, and intensely partisan statements on the labor record of the two major parties appeared over the signature of labor officials pledged to nonpartisanship. . . . Inevitably the friends whom the Federation endorses are a heterogeneous assortment whose records are a jumble of conflicting political positions and not even in accord with the announced policies of the Federation."¹⁵

LABOR AND THE SOCIALIST PARTIES

Both within and outside the ranks of the A.F.L. there has been pressure for the abandonment of nonpartisan politics in favor of one of three alternatives: affiliation of labor with a third party; the creation of an independent labor party; the expression of the political aspirations of the working class through socialist parties. There has long been a wing of the labor movement which has maintained that it should operate economically through trade-unionism and politically through Marxian socialist parties of one kind or another.

The Socialist parties. Socialist party politics go back to the 1870's in the United States; the Socialist Labor party has had a continuous existence since 1877. This and the other parties of Marxist orientation have sought their following and strength in the working class, in whose name they speak and to whose unconscious aspirations they seek to give expression and direction. Following a period of influence in the late 1880's, the Socialist Labor party declined in importance. After severe factional splits, all the wings of the

¹⁴ Lewis L. Lorwin, *The American Federation of Labor*. The Brookings Institution. Washington, D. C. 1933. P. 425.

¹⁵ *Ibid.*, pp. 422-24.

Socialist movement, except the Socialist Labor party dominated by Daniel De Leon, found unity in 1901 in the new Socialist party. Until the consequences of the World War, the Russian Revolution, and the peace disastrously affected it, the Socialist party was the most important political revolutionary organization in the United States.

The Socialist party at its height. In 1912 the party claimed complete or partial control of a number of cities, officeholders to the number of a thousand, and twenty-one representatives in the legislatures of nine states. Two years later the party had increased its representation to thirty-one legislators in thirteen states and had elected one congressman. In 1912 the Socialist party reached the peak of its voting strength. Its presidential candidate, Eugene V. Debs, received about 900,000 votes, many times the membership of the party and almost 6 per cent of the total vote cast.¹⁶ The Socialist party never came near the realization of its objective—the political organization of the workers in order to capture control of the state from the capitalists—and Deb's large vote is rather misleading. It must be evaluated as a general expression of dissent and in terms of Deb's personal magnetism, the party's minimum reform program, and the appeal it made to the native radicalism of the Middle and Far West formerly represented by Populism. While the center of strength of the Socialist party was organized labor, it drew support from professional, middle-class and agrarian elements. Moreover not one of the states where it polled a high percentage vote was primarily a manufacturing state.

Decline of the Socialist party and the rise of the Communist party. The Socialist party never again approached its 1912 vote, and after the War it found itself in competition with several new Socialist parties born out of the issues created by the Russian Revolution.¹⁷ From among these the Communist party of today emerged as the dominant one. Since then the Socialist party, torn by factionalism within, has been in bitter conflict with the Communist party, the latter—like the Socialist party earlier—has secured members and voting strength from among trade-unionists in large urban centers and in middle-class intellectual circles. Although it has a working-class base, the Communist party has attracted only a relatively small number of American workers and is the means of political expression of only a tiny segment of the labor movement. The vote in the 1936 presidential election offers some indication of the very limited degree to which the Marxist parties are politically employed by American workers. Of a total of almost 46,000,000

¹⁶ Reimer, the Socialist Labor party candidate, received about 30,000 votes.

¹⁷ See below.

votes cast, the Socialists polled 187,000 votes, the Communists 80,000, and the Socialist Labor party 13,000.¹⁸

Significance of the radical parties. The primary importance of the radical parties lies outside of electoral politics. But even in this sphere they have been influential in sharpening political consciousness, in formulating progressive programs which have affected the platforms of the two major parties, and in prodding the organized labor movement into more vigorous political activities.

Left-wing criticism of A.F.L. policy. One of the chief sources of criticism of the nonpartisan policy of the A.F.L. was the Socialist membership of the Federation, which tried without success to push that organization into independent political action, arguing that with the collapse of capitalism inevitable, a new political instrument must be forged which, with the trade-unions, would create a Socialist society. The Socialists attacked the Federation's policy on the ground that its results were meagre in terms of the cost and energy expended, that it defeated its purpose by dividing labor's voting strength, that the chief gains claimed were secured by liberal reformers and not the A.F.L., and that union men elected on Democratic and Republican tickets exchange their trade-union principles and loyalty for party allegiance.

INDEPENDENT LABOR POLITICS

Many nonsocialists in and outside the A.F.L. have levied the same criticisms against its policy. Some of these wished to emulate the European labor movements in their march to social reform through independent labor parties. Even before the World War, and especially after it, the opinion grew in the labor movement that changes in American capitalism rendered nonpartisan politics ineffective. The great corporations which had developed, it was argued, were stockholders in both major parties and possessed vast political power. Continued industrialization, on the other hand, led to greater insecurity for the wage earner. Trade-unionism alone could not give security. For that the assistance of the state was imperative. But with both parties in the hands of the propertied classes, who utilized the state for their benefit, a service state functioning for the well-being of labor was a veritable impossibility unless labor went into politics on its own or in alliance with farm groups. To those who argued in this fashion, the solution for the working class lay only in an independent labor or farmer-labor party.

¹⁸ It must be noted that the radical vote tends to fall in critical elections, when sharper differences will appear between the two major parties and when left-wingers will tend to vote for the more liberal candidate and platform.

Early labor parties. Though it is sometimes forgotten, the American labor movement has had a rich history of independent political action. Following the establishment of the first workingmen's party in the world in Philadelphia in 1828, labor parties appeared in New York, Massachusetts, New Jersey, and states farther West.¹⁹ The National Labor Union gave birth to the Labor Reform party in 1872; several cities saw active and even successful labor ventures into local politics in the late seventies and early eighties; the efforts of the Greenback Labor party were followed by a widespread turn to independent politics in 1886-87. The Haymarket affair²⁰ led to the most successful labor party venture that Chicago had yet seen and to the birth of the United Labor party. To match labor's political success in Chicago there was the Henry George campaign in New York City, the victories of the Union Labor party in Milwaukee, and the strong vote recorded by labor parties in New England, in the Middle and Northwest states, and in New Jersey, Pennsylvania, and Colorado. In the following decade a portion of the labor movement turned with sympathy to the Populist party.

Within the fold of the A.F.L. the tradition of independent political action has never died. Although the Federation has steadfastly resisted all efforts to cause it to abandon its nonpartisan policy, state federations and central labor bodies and certain unions have frequently indicated their dissatisfaction by demanding independent labor politics. The United Mine Workers, for example, declared in 1914 that the time was ripe "for the laboring people to come together in a political labor party." The year before the federation of labor in the state of Washington showed socialist influence when it declared that "the political parties now in control of our government are owned and controlled by our industrial masters," and recommended that the workers "vote for members of their own class to fill all legislative, executive, or judicial positions"

Postwar labor politics. The most vital and militant participation of labor in politics occurred after the World War when, with other developments, there was a significant movement in the direction of a national labor party. The causes for labor's political awakening in the postwar years are many. The great growth in trade-union membership during the War, the impact of the German and Russian revolutions, the bitter postwar strikes, the role of the federal and state governments in labor disputes, the extensive use of injunctions, the maladjustment between wages and prices, the postwar depression, the influence of the British Labour party, the wave of liberalism in America and Europe which hoped to "reconstruct" the Western world at the close of the War, the work of the railroad brotherhoods in stimulating

¹⁹ See Chapter 10.

²⁰ See pp. 166-67.

the political consciousness of labor in connection with its support of the Plumb plan and its fight against the Transportation Act of 1920—these were the major forces at work.

Movement for a national labor party. While the the first labor party of the period appeared in Bridgeport, Connecticut, as the result of the machinists' struggle for the eight-hour day, the chief drive for the movement into independent electoral politics came from Chicago. The first step was the launching of an Independent Labor party in 1918 for the spring mayoralty campaign of the following year by the Chicago Federation of Labor. In April, 1919, the Chicago Independent Labor party expanded and organized the Labor party of Illinois. This body formulated a fourteen-point program which included demands for the democratic control of industry and commerce, for minimum wages, for reduction of the costs of living, and for the public ownership of utilities, mines, banks, and insurance companies. In March of the same year an American Labor party appeared in New York City with a less radical program. By midsummer of 1919 the movement had spread so widely that delegates from labor party groups in Connecticut, Illinois, Minnesota, New York, Ohio, South Dakota, and Kansas met and drew up plans for a convention to organize a national labor party.

The enthusiastic convention held in Chicago in November, 1919, declared: "Labor is the primary and just basis of political responsibility and power. It is not merely the right but the duty of workers of hand and brain to become a party."²¹ The convention founded the American Labor party and formulated an extremely advanced platform which embraced such diverse demands as the full restoration of all civil and constitutional rights, the eight-hour day and the forty-eight-hour week, the abolition of the Senate and the limitation of the power of the Supreme Court, the government ownership of public utilities and natural resources, and the right to organize and bargain collectively. When the national convention of the American Labor party met in Chicago, July, 1920, there were among the delegates representatives from existing labor party organizations in fifteen states. In the course of its sessions a group of liberals outside the labor movement joined it. This gathering changed the name of the party to the Farmer-Labor party of the United States, drew up a constitution for the party, and wrote a platform demanding the extension of political democracy, the attainment of industrial and social democracy, and the abolition of imperialism.

The new party rested its strength upon A.F.L. union members, the officials of international unions, state federations, and central labor bodies being among its leaders. But Gompers and the chief officials of the Federation opposed it and fought for their nonpartisan policy. In a letter to the Chicago

²¹ *The New Republic*, November 29, 1919.

Federation of Labor in March, 1920, Gompers wrote: "The only part the so-called Labor Party will play in the coming elections will be to hamper the success of labor in its efforts to defeat its enemies and elect its friends. . . . [It] has in essence adopted the Socialist party program as well as the Socialist party policy . . . that it is better to defeat our friends than our enemies." ²²

The vote for the Farmer Labor party's presidential candidate in the 1920 election, Parley P. Christensen, a Utah lawyer, was slight and disappointing. The party polled about a quarter of a million votes, and received over 10,000 votes in only nine states. But the results did not check the movement; the party held together, planned for the 1922 elections, and sought to fuse its forces with those of other labor and liberal groups. Of the latter, two were particularly important—the National Nonpartisan League and the Conference for Progressive Political Action.

The National Nonpartisan League and the C.P.P.A. The first, an expression of the political interests of small farmers, went back to 1916 and operated through the primaries of the older parties. By 1918 it had become a power in several Midwestern states, and it was a vehicle for farm-labor affiliation. The C.P.P.A. was a product of the stake of the railroad unions in politics and their dissatisfaction with A.F.L. political action. Founded early in 1922, it consisted in progressive national unions, local, state, and national labor parties, farm groups, and the Socialist party. Most of its members were favorably disposed toward a vigorous nonpartisan policy and participation in the Republican and Democratic parties. In the 1922 elections the C.P.P.A. decided not to place candidates in the field where there was no chance for their victory or where a division of the vote would elect "an enemy of labor." The relative success of the policy in the Congressional elections of 1922 strengthened the arguments of those who wanted progressive nonpartisan politics and dampened the ardor for a third party. Senator La Follette's victory that year was most striking and made him a likely presidential candidate in 1924. He issued a call for progressive unity after the elections, and by 1924 the drift of progressives and farmer-laborites of all varieties towards his candidacy was quite strong. The 1924 conference of the C.P.P.A. voted to support La Follette on his own platform, which was progressivism of the vintage of 1912.²³ Affected by inner differences and the pressure of choosing between continuance of independent action and acceptance of the C.P.P.A. position, and attracted by the chance of success with La Follette's prestige and broader appeal, the Farmer-Labor party finally accepted him.²⁴

²² *The New Majority*, March 27, 1920.

²³ The character of the whole platform is represented by the two slogans, "The supreme issue is the encroachment of the powerful few upon the rights of the many," and "the will of the people shall be the law of the land."

²⁴ The Socialist party also endorsed the La Follette-Wheeler ticket.

Decline of the movement. The La Follette-Wheeler ticket appeared under different party names in the different states, and received over four and three-quarter million votes. Progressives and laborites also captured forty seats in Congress. This seeming manifestation of progressive success, however, sounded the decline of labor's political insurgency. The farmer-labor movement was seriously weakened by attempts of communists to capture it, socialists and Western progressives split and went their separate ways, points of common interest no longer united farmers and workers, and the railroad unions abandoned the C.P.P.A. Add to these the effects of the return of prosperity, and the rapid demise of the labor party movement in 1925 becomes understandable. With the dissipation of the dream of a national labor party there went, too, much of the militancy, radicalism, and optimism that marked the labor movement of the postwar years.

LABOR POLITICS SINCE 1929

The deepening of the depression following the collapse of 1929 provided the setting for organized labor's revival of interest in politics. There was early evidence of this in the appearance, in 1930-31, of local labor parties in Philadelphia, Kenosha, Wisconsin, New Bedford, Massachusetts, Elizabethton, Tennessee, and elsewhere, which were the products of unsuccessful strikes. Loss in economic strength led labor once again to turn to politics, and the A.F.L.'s traditional policy was subjected to sharp criticism. It was recognized that labor would have to wield political power to secure some protection from the impact of the depression, for the effects of the latter were so disastrous that there was no choice but to turn to the government for rescue. Items of the first importance—wages and hours, jobs, relief, unemployment insurance—were involved. And it was in terms of these that labor's political awareness matured rapidly. With the legislation of the New Deal, the political stake became greater. Labor not only had to maintain its immediate gains in the form of relief measures but it had to translate a broad social security program into fact. Then, too, there were involved the continuance and extension of the government's favorable policy on organization and collective bargaining. What could labor do if the courts nullified the New Deal measures? How could labor insure their proper administration? All these considerations pointed to active participation in politics. But the question of the manner in which labor was to act politically still remained unsettled.

Independent labor politics again. From the progressive wing of the A.F.L. there came again the call for an independent labor party. At the 1935 convention of the Federation a delegate from the International Ladies'

Garment Workers' Union declared: "Labor . . . must throw the challenge into the teeth of big business and say: 'Labor will organize its political strength. It will not traffic with the agents of big business. Labor will not merely lobby for measures. Labor will put its own party into the field, with its own program, with its own candidates, financed and controlled in every respect by labor.' . . . Labor must hammer out its own program to balance production and distribution. Labor must also organize its own party to put that program into effect, for the two old parties will never do it for Labor and the masses."²⁵ Though rejected by the convention, the proposal received substantial support.

There was no reason to believe that any of the left-wing parties would be accepted by the masses of labor as the agency for political expression. The Socialist Labor party maintained a nominal existence only through the undying faith of a valiant handful of workers. The Socialist party had never recovered from its inner struggles over the War issue, the split brought by the Russian Revolution, and the endless conflict with the communists. In the 1930's internal differences over policy further weakened it. While it still scored local victories in such centers as Milwaukee, Reading, and Bridgeport, these were to a significant degree due to support from "good government" and reformist groups. In 1936 it lost the support of those who thought it would be wiser to select the lesser of two evils by favoring Franklin D. Roosevelt over Alfred M. Landon and by not condemning the former and the New Deal. The party had neither the unity nor the strength in the trade-union movement to become the focal point for independent labor action. Nor was the Communist party in a position to attract mass labor support. Its name, its program, its earlier policy of boring from within, and the later attempts to found dual unions had won it unmeasured hostility from most of the trade-unions. In the 1936 elections the Communist party ran its own ticket but devoted the bulk of its energy to the defeat of the Republicans.

As a matter of fact, with the approach of the presidential campaign of 1936, the growing sentiment for independent labor action received a decisive check except in those states where farmer-labor parties already existed. Bitter attacks upon President Roosevelt and his program, particularly upon the National Labor Relations and the Social Security acts, from conservative and reactionary quarters, decisively swung labor to the side of the President. The rise of the C.I.O. also significantly affected labor's role in politics. This organization, with its many newly born unions of unskilled and semiskilled workers, was forced to greater political concern because of their limited bargaining and economic strength.

²⁵ Remarks of Isidore Nagler, *Report of the Proceedings of the A.F.L. Convention, 1935*, p. 761.

Minnesota Farmer-Labor party. Of the farmer-labor parties, only one could be viewed in the early thirties as the nucleus for a national movement. This is the Minnesota Farmer-Labor Party, originally fused out of socialist elements and the National Nonpartisan League, which has been functioning since 1918. In 1922 it elected a United States senator, and added ten years later one congressman, the governor of the state, about a third of the state legislature, and the mayors of four cities. In exchange for the withdrawal of the Democratic state ticket in 1936, the party supported President Roosevelt. By August, 1938, it controlled the state executive, the lower house of the state legislature, and had sent two senators and five out of nine congressmen to Washington. Its severe defeat in November, 1938, however, meant the loss of control of the state. Former Governor Elmer A. Benson, the party's foremost figure, observed that his party rests upon "labor unions, militant farm groups, co-operatives, the organized unemployed, and political clubs which are a device for expressing on the political front the economic needs of the masses—tenant and operating farmers, the white-collar, manual and professional workers, and the small merchant." Its goal is industrial democracy and "a system of planned plenty" to be achieved by the collective ownership and democratic operation and control of "natural resources and monopolized industries. . . ." ²⁶ The party's immediate program demands state public housing, state production of electricity for sale to municipalities, state ownership of liquor stores, a state-owned cement plant, the lowering of the legal interest rate from 6 to 4 per cent, laws for the aid of co-operatives, the development of a consumers' bureau and a state planning bureau, laws for wage and trade-union protection, progressive taxation, and the extension of the educational system.

Developments in Wisconsin. In Wisconsin, a third-party movement inspired by the La Follettes also pointed in the direction of a farmer-labor party. The Progressive party, founded in 1934, had striking electoral success in state politics but did not attain unity with the socialists, whose great strength lay in Milwaukee, and the state federation of labor because of conflicts over party control and program. In 1935, as a result of two conferences called by the Wisconsin Federation of Labor, a militant declaration of principles resembling those of the Minnesota Farmer-Labor party was drawn up, and the basis was laid for the Wisconsin Farmer-Labor Federation. This organization drew its strength from farmer, labor, co-operative, and socialist sources. Due to continued friction between it and Philip La Follette, the Federation refused him its endorsement but supported progressives for all other state offices. In 1936 all progressives on the state ticket were elected.

²⁶ Harry W. Laidler, *Toward a Farmer-Labor Party*. League for Industrial Democracy. New York. 1938. P. 21.

Differences between the Federation and Governor La Follette, who favored a rather amorphous progressive party as opposed to a "class party," continued, and in June, 1938, La Follette announced that he proposed to establish a National Progressive party. This was to be distinguished by appealing symbols, noble, if vague, progressive slogans, and was to be led by a liberal with mass appeal. With this move he rejected a more radical farmer-labor party with well-defined objectives. Liberals throughout the country were cold to La Follette's proposals, and the party has not yet been launched.

The American Labor party. The emergence of the American Labor party in New York greatly encouraged those who urged independent labor politics. An offshoot of Labor's Nonpartisan League, its creation was due largely to the efforts of the progressive unions. Launched in the summer of 1936 to help re-elect President Roosevelt and Governor Lehman that year, it polled almost a quarter of a million votes and became an important factor in state and city politics. In this it was favored by the current reform wave and the revolt against Tammany. Supporting Fiorello LaGuardia in 1937, it polled a little less than half a million votes and helped decisively in electing him Mayor of New York City. At the same time it won almost one-fifth of the seats in the City Council. In the 1938 election the A.L.P. entered into alliances with both older parties in different parts of the city, supported the Democratic candidates for governor (Lehman) and lieutenant governor, and also ran its own local candidates. Though its total vote dropped, and it lost strength in the state legislature, it still maintained the balance of power between the major parties. Its strength in the 1939 elections was further reduced, and certain essential weaknesses of the A.L.P. were revealed. Apparently its affiliated trade-union membership gave a misleading impression of its strength, and it had to attach itself to a major political figure to poll an impressive vote. Individual membership in the party and its ward and precinct organization were not solidly developed. Furthermore, several old-line labor leaders tended to treat the party as if it were their personal property. The inner struggle over the policy toward communists and the efforts to expel the latter from official positions in the party have had disruptive consequences. The A.L.P. is no longer regarded so hopefully by those who dreamed of a successful labor party.

Labor's Nonpartisan League. Labor's growing interest in politics and the formation of the C.I.O. led to the establishment of Labor's Nonpartisan League in Washington on August 10, 1936, with John L. Lewis as its president, and Sidney Hillman as treasurer. Claiming to represent 85 per cent of the organized workers of the country, the League announced that its sole objective in 1936 was the re-election of President Roosevelt. It indicated,

however, that it would become a permanent body to "further liberalism in the United States" and specifically spoke of the existing need for wage and hour legislation. Supported at the start by A.F.L., C.I.O., and independent unions, the League rapidly established local branches throughout the country. The friction which developed between the League and those A.F.L. leaders who were independently aiding the Roosevelt campaign became intensified after the election. William Green and many members of the Executive Council of the A.F.L. came to distrust the League as animosity between the Federation and the C.I.O. grew more intense. On April 2, 1938, Green urged the A.F.L. groups to abandon the League, declaring that it is "nothing more than a C.I.O. agency, a ventriloquist dummy for the C.I.O. leaders" who regarded it as the "nucleus of an independent political party. . . ." In answer, the League asserted that most of its officers belonged to A.F.L. unions, and that it reflected the political aspirations of its membership. The two organizations quarreled sharply over the terms of the wages and hours bill and over nominations for local offices. In 1937 and 1938 the League was in fact competing with the Nonpartisan Political Committee of the A.F.L.

The struggle between the C.I.O. and the A.F.L. was thus carried over into the political arena, where its consequences were serious. Endorsement by Labor's Nonpartisan League meant A.F.L. support for a rival candidate. This brought about the defeat of several labor candidates throughout the country in 1937 and 1938. In Michigan, California, Pennsylvania, and elsewhere, however, C.I.O. and A.F.L. political co-operation in 1938 did take place. When, at the close of 1938, John L. Lewis declared that Labor's Nonpartisan League would enter the Democratic presidential primaries to insure a progressive candidate for 1940, William Green instructed all A.F.L. organizations to shun this procedure.

Immediate prospects. Significantly enough, the immediate political future of the labor movement rests with the Democratic party. If President Roosevelt runs for a third term, or if the Democratic party nominates a liberal in 1940, it is virtually certain that labor will throw its vote to the Democratic candidate and make no effort to initiate a third national party. It would not seek to found an independent labor or farmer-labor party, and there would be little reason for it to participate in the launching of a broad third-party movement progressive in character with its appeal directed to catch the votes of dissenting elements in both parties, labor, farmers, white-collar workers, petty middle-class, and "good government" elements. On the other hand, the nomination of a conservative Democrat might well make possible a complete break between the liberal and conservative wings of the Democratic party, with the former moving out of the party to join

with labor in providing the foundation of a progressive third party. In any case, the odds are extremely heavy against the appearance of a national labor or farmer-labor party in 1940. This judgment takes into account the sharp attack which John L. Lewis made upon President Roosevelt and the New Deal at the 1940 United Mine Workers convention. Lewis's action was apparently designed to enable the C.I.O. to exert more influence on the selection of the Democratic candidate and the party's platform. But after four years of a conservative administration, a farmer-labor party might well become a reality. The long-standing obstacles in the way of such a development would no longer be insurmountable. The history of the Minnesota Farmer-Labor party has indicated that workers and farmers can get together on candidates and critical issues. Moreover, Labor's Nonpartisan League has sought to develop alliances with progressive farm elements, holding joint conferences with the Farmers' Educational and Co-operative Union.

One point emerges with clarity. Regardless of the precise forms they may take, the political concerns and activities of organized labor will not diminish. The well-being of the worker is now so intimately tied to government that he must strive for greater political power whether secured through direct independent action or through the collective bargaining of nonpartisan tactics.

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QUESTIONS

1. How do you account for the absence of a powerful labor party in America?
2. What gains has the A.F.L. secured from its political course? What losses? How does the A.F.L. operate politically in national, state, and local politics?
3. What gains can be ascribed to independent labor politics? What losses?
4. Differentiate between the present political policies of the A.F.L. and the C.I.O.
5. To what extent are labor's aims based upon immediate needs and to what extent upon a desire for fundamental reconstruction?
6. Is labor's demand that the government grant minimum wages, pension the aged, give benefits to the unemployed, and plan toward stabilized production likely to undermine the power of the trade-unions?
7. What are the chances for the appearance of a national Farmer-Labor party?

BOOK
FOUR • • • THE EMPLOYERS'
APPROACH
TO THE
LABOR PROBLEM

21 THE BACKGROUND OF MANAGEMENT'S LABOR POLICIES

IT WILL help us to understand employers' attitudes toward labor if we keep constantly in mind the profit-seeking nature of modern economic society. To be successful, management must keep costs below income. Labor is one of the most important costs; management desires, therefore, to keep labor costs as low as possible, especially in those competitive industries where labor bulks large in the total cost.

Labor is not merely a cost—it is an avoidable cost. That is, ordinarily the cost for labor need not be incurred if management prefers. With the exception of those who are working under contract and, particularly, important workers whose services management is anxious to retain, workers are paid only for work done or time spent. When there is no work, management's responsibility for the payment of wages ceases so that no costs are incurred as far as most workers are concerned. In this respect, labor is unlike many other costs of business. Machinery and equipment, plants and buildings and so on, depreciate whether or not they are used, and the costs of depreciation continue in bad times as in good. Interest on funded debt, taxes on property, and other overhead charges likewise tend to remain fairly constant regardless of the volume of production, and there is little that management can do to reduce them during bad times. Labor costs, however, are much more flexible. By wage reductions, by layoffs, by discharges, management is able to reduce its labor costs.

Curiously enough, the greater the proportion of overhead to total costs, the greater is the pressure on labor costs. Faced with a declining volume of business, prudent management tries to lower its costs; since the overhead costs cannot be materially reduced, the labor costs must bear the burden, and the burden becomes more severe as the overhead costs become more significant in the total costs.

This is one of the keys to management's policies toward labor. However well disposed an employer may be toward his employees, his decisions concerning them must inevitably be guided by considerations of profit and loss. If business is good, he may be generous in granting wage increases and in improving working conditions. When business is bad, he may decide to continue for a time to produce at a loss rather than to shut down entirely. But his area of discretion is limited. Continued production at a loss may result in bankruptcy; on the other hand, wage increases without regard to profits may mean that the employer will lose money even in periods of active production.

Not only is the employer's discretion limited by the conditions peculiar to his own business, but it is also seriously affected by the behavior of his competitors. It is a truism that in any competitive industry, the worst employer sets the standards, for if the others wish to retain their markets they must, other factors being equal, get their labor costs down to the level of the worst employer. Moreover, even if all the employers in a particular industry are willing to maintain desirable labor standards, they are often unable to ignore conditions in an industry producing substitute goods; for, if the better conditions result in higher costs and, hence, in higher prices, consumers may resort to the substitute commodity, causing a loss of business to all the employers in the first industry.

By and large, then, the employer's attitudes toward labor are colored materially by the conflict of economic interests. It is the clash between the employer's profit motive and the worker's desire to better his circumstances.

There are, on the other hand, certain factors making for a softening of the employer's attitude. Labor and capital are necessary to each other, and management's policies are often guided by the knowledge that workers are essential to profits, though they may endanger profits if they cost too much. Furthermore, there is no necessary correspondence between high labor costs and high wages or between low labor costs and low wages. Labor costs are determined by the ratio of wages to productivity. A man receiving eight dollars a day for producing 80 units is a cheaper worker than the man who gets 4 dollars a day and produces only 35 units. In the first case, the labor cost is 10 cents per unit; in the second, it is 11.4 cents per unit. Employers may thus find it profitable to raise wages if there is a more than proportionate increase in output. Even in highly mechanized establishments, it

is often possible for workers to produce more units per day by working a little harder. In such cases, the worker's desire for higher wages and the employer's desire for greater profits can be satisfied simultaneously. This, as we shall later see, was one of the cornerstones of scientific management.

LARGE-SCALE PRODUCTION

Profit-seeking activity is carried on, to an ever-larger extent, in huge factories where the individual employee is, to use a time-worn expression, merely a cog in a giant machine. Gone is the pride of craftsmanship which characterized an earlier economic society; gone, too, is much of the skill which was once the worker's chief stock in trade. That skill has now been transferred to a machine and the worker's function reduced in many instances to that of mere machine tending. Assembling large numbers of men in a single plant and working them at high speeds on a repetitive job make for industrial unrest. Besides, there are the almost inevitable accompaniments of large-scale factory production: bad living conditions, dwellings often far removed from the work place necessitating expenditure of time and money in getting to and from work, and the wear and tear of life in a metropolitan community. To the extent that all these influences affect the worker's performance adversely and result in poorer or costlier products, management suffers by their existence and benefits by their removal wholly apart from any humane considerations.

ABSENTEE OWNERSHIP

We have used the terms "employer" and "management" interchangeably as though they were really one and the same. Actually, as has been described in an earlier section of this volume, the day is long since past when the majority of workers were engaged in plants managed by the owners. It is the managers, rather than the owners, who determine labor policies of the company; and they are likely to be guided more closely by considerations of profit than the individual employer running his own business. The latter, perhaps working side by side with his men, may formulate his policies with a much better knowledge of the men and of their problems. Also, because he is readily available, he is better able to know the grievances of the men and to adjust them as they arise. He is able to reward the deserving and to discipline the undeserving. But as the enterprise grows in size, the functions of management tend to be increasingly delegated to others—from foremen and straw bosses up to chairmen of the boards of directors. With this delegation of authority comes an impersonality which fosters labor grievances and also makes it more difficult to settle them satisfactorily.

NEW ATTITUDES TOWARD LABOR

If we were to compare the labor policies of a typical large employer of the 1920's with those of employers half a century ago, we would note a significant change. For effective performance by his employees the latter relied chiefly on threats of dismissal. Employers seemed to be quite satisfied that the policy of driving men was best calculated to get the most out of them. Such attitudes die hard, and there are still numerous employers who may be said to have no other labor policy. Yet most of the larger enterprises have adopted new tactics in dealing with labor. They have established elaborate and expensive personnel departments, instituted numerous financial incentives such as bonuses and thrift schemes, and provided a multitude of services of a cultural and recreational character. In the formulation and adoption of these policies, various influences have been at work. First, a growing number of American industrialists have come to believe that conducting a large enterprise carries with it a social obligation to the workers and to the community; some of the more progressive and enlightened employers like Dennison, Filene, and Swope have been in the van of the movement for better labor policies. Much more important, however, has been the growing conviction that these policies pay for themselves many times over; that it is profitable to abandon the whip and embark instead on a kinder labor policy. The development of cost accounting opened employers' eyes to the advantages to be derived from stimulating the worker to greater effort. The teachings of the leaders of scientific management influenced the development of new concepts of management. And the unique conditions brought about by the World War crystallized the feeling that the time had come to adopt new labor programs.

SCIENTIFIC MANAGEMENT

History. Scientific management is the term used to denote an attitude toward industry and labor relations that had its beginnings with Frederick Winslow Taylor. As a foreman in a machine shop, Taylor was seriously disturbed by the fact that the workers were "soldiering" on the job and by the knowledge that any worker who did not adopt the same policies lost favor with his fellow employees. To Taylor's engineering mind, restriction of output was undesirable, for he felt that the abolition of restriction of output was a fundamental prerequisite to better conditions. His attitude on this subject may perhaps best be seen in his book, *The Principles of Scientific Management*, in which he said:

The elimination of "soldiering" and of the several causes of slow working would so lower the cost of production that both our home and foreign markets would be greatly enlarged, and we could compete on more than even terms with our rivals. It would remove one of the fundamental causes for dull times, for lack of employment, and for poverty, and therefore would have a more permanent and far-reaching effect upon these misfortunes than any of the curative remedies that are now being used to soften their consequences. It would insure higher wages and make shorter working hours and better working and home conditions possible.¹

Taylor abhorred rule-of-thumb methods in production and condemned the employer for the lack of planning and the utilization of poor machinery as he condemned the worker for restricting output. What industry needed, in his opinion, were certain rules of conduct which were as definitely ascertainable as the laws of natural science.²

Having as his maxim the idea that "the principal object of management should be to secure the maximum prosperity for the employer, coupled with the maximum prosperity for each employ  ,"³ Taylor started to achieve this goal by the application to industry of his "natural" laws. In its early years Taylor's scheme contained two essential features: elementary time study and the differential rate. Restriction of output, in his opinion, was made possible by the employer's ignorance of the worker's ability to produce. Employers proceeded upon rules of thumb based on average output in the past, an obviously unsatisfactory figure since it was obtained when workers were undoubtedly soldiering. Elementary time study was meant to remedy this condition. Each job was to be analyzed into its constituent operations. Then workers who had been given an incentive to put forth their best efforts were timed in the performance of these individual operations, after having been given directions as to the best methods of work. After the operations had been timed frequently enough to insure accuracy, the individual times were added and a total was arrived at. Thenceforth, all workers at that particular job were expected to maintain a rate of speed at least equal to that fixed by means of time study (commonly called time and motion study).

The differential rate went along with elementary time study. As we shall see in a later chapter, it was intended to pay workers who exceeded the expected production at one rate and to pay those who fell below average at a lower rate, thus offering an inducement to come up to or exceed the mark.

¹ F. W. Taylor, *The Principles of Scientific Management*. Harper & Brothers. New York. 1911. P. 15.

² *Ibid.*, p. 7.

³ *Ibid.*, p. 9.

Principles. As time passed, Taylor's program expanded. By 1903, scientific management embraced three principal features. First, the problem of securing the interest of the workmen in maximum efficiency meant securing able workmen and then paying them more than they could get elsewhere. Second was the task of improving the methods of work. Taylor outlined the need for standardization of tools and equipment, a necessary prerequisite to efficiency in the factory. He also emphasized the importance of routing the work through the factory, allotting a definite time for its performance, filling out of instruction cards so that each workman knew just what to do and when to do it.

The third feature was the emphasis on planning. It was no longer sufficient, in Taylor's eyes, to have foremen who supervised all aspects of work; instead, each part was to be delegated to a definite person who was to devote himself entirely to it. The plan, sometimes known as functional foremanship, called for the appointment of various minor officials or foremen: the gang boss, who is in charge of the work up to the time that the work is put in the machine and who supplies drawings, and so on; the speed boss, who sees that the proper tools are used and that the work is performed correctly; the inspector; the repair boss; the route clerk, who determines the order in which the work is to be done; the instruction card clerk, who fills out the cards for the individual workmen; the time and cost clerk, who informs the workers on time and rates of pay, and the shop disciplinarian whose functions are self-explanatory.⁴ Taylor argued that such a division of functions among foremen would make for greater production and lower unit costs.

While Taylor was the outstanding exponent of scientific management—he is commonly regarded as its father—there were a great many others who took prominent roles in its development. Outstanding among these were Henry L. Gantt, Frank B. Gilbreth, Carl G. Barth, Harrington Emerson, Sanford E. Thompson, Horace K. Hathaway, and Morris L. Cooke. In many instances, they differed widely in the details of their plans, but they were united in their emphasis on the need for an exact determination of the productive capacity of workers and on the adoption within the factory of the best methods and processes available. They urged that the adoption of scientific management would bring a new era of harmonious industrial relations: workers would be trained as never before; they would be treated justly; they would be paid in proportion to their ability; they would be protected against rate cutting or arbitrary alteration of the task;

⁴Horace B. Drury, *Scientific Management*. 3d Ed. Columbia University Press. New York. 1922. Pp. 87-111.

friendly feeling between men and management would be promoted, and strikes and industrial warfare would be eliminated.⁵

Opposition of Labor. It is not to be wondered at that trade-unionism has been opposed to scientific management from the very outset. Inherent in the philosophy of Taylorism was the idea that there was no room for collective bargaining and trade-unionism, though some of the later exponents of scientific management expressed themselves in favor of organization by labor. There was no area of bargaining left if there were laws of industry which, when discovered and put into operation, were as inexorable as the laws governing the physical universe. The engineers were to discover and apply the truth; that done, organization of labor could only impede the operation of the natural laws of industry. The industrial world was to be ruled by an engineering oligarchy. This was perhaps the most important reason for trade-union opposition to scientific management. There were, however, other charges in labor's indictment. Labor men asserted that scientific management was nothing but a cunningly devised method of speed-up calculated to result in physical and nervous exhaustion of the worker; that it reduced the worker to a mechanical robot performing simple repetitive operations, and that it tended to eliminate consideration for the worker.⁶ They argued besides, that scientific management was decidedly undemocratic in that it substituted the autocracy of the employer for the democracy which could be achieved only by the existence of trade-unions.

Results. That scientific management, if carried out according to the letter and the spirit of Taylor's philosophy, would have some beneficial results seems to be clear. The installation of the best techniques, the thoroughgoing reorganization of the factory with a view to maximizing efficiency, the improvements in the ways of keeping records, the revamping of the purchasing and sales departments with a view to eliminating inefficiency, and the introduction of a proper system of routing and scheduling seem to provide an opportunity for producing decided savings without, at least superficially, affecting the interests of labor adversely. In practice, however, scientific management as carried on in the period up to the World War lent support to the charges made against it by organized labor. Professor Hoxie, studying the movement for the United States Commission on Industrial Relations, observed:

⁵ Robert F. Hoxie, *Scientific Management and Labor*. D. Appleton-Century Company. New York. 1920. Pp. 8-11.

⁶ *Ibid.*, pp. 15-17. Where unions are powerful, they occasionally relax in their antagonism to scientific management, and may even co-operate actively with the employer in introducing better working methods and increasing industrial efficiency. This has been especially true in the garment trades and in railroading.

Scientific management . . . has evolved no methods of determining objective scientific fact, and has established no natural laws to which both sides must or can refer to arbitrament, equally binding upon both and through which, therefore, in the end the worker is given equal voice with the employer. In all these matters, the judgment of the employer or his agent determines the outcome, where no rules of machinery exist through which the men may express and enforce their ideas of truth and justice, and the agents of the employers, the time study men . . . are usually not fitted to stand as unbiased arbiters between employers and workmen—as the unimpeachable upholders of scientific fact and law in the midst of a struggle for personal gain.⁷

It is very doubtful whether scientific management in a profit-seeking society could ever have fulfilled the claims advanced on its behalf; the temptation for management to install the efficiency programs without extending the benefits to labor is difficult to avoid. And, it should be noted, Taylor and his followers presupposed a wage standard which would be relatively fixed in terms of purchasing power and gave little indication of believing that workers were entitled to an increasingly higher standard of living as production grew larger. In any case, since relatively few employers adopted the systems as a whole, it is unlikely that pure scientific management could have stood as the labor policy of a large proportion of American employers.

That scientific management has had far-reaching influences on American industry is obvious from even a casual glance at any large enterprise. Methods of production, of distribution, and even of office operation have been completely overhauled and modernized. There has been a relentless search for more efficient ways of working, for better tools for more exact measurement, for more systematic planning. Customary methods of wage payment have been abandoned wholesale and have been replaced by incentive wage methods. Indeed, it would not be too much to say that scientific management has been one of the most important developments since the beginning of the Industrial Revolution.

As far as the employer's labor policies were concerned, however, the theories of scientific management were decidedly incomplete. With the advent of the World War, employers in ever-increasing numbers looked for the solution of their labor problems in personnel management or administration.

THE EFFECT OF THE WORLD WAR

The World War presented labor with a unique opportunity to improve its conditions. For several years, jobs were relatively abundant and the competition among employers for skilled labor was quite keen. Lucrative governmental work, together with the general economic conditions char-

⁷ *Ibid.*, p. 103.

acteristic of a "boom" period, made it possible for workers to bargain effectively; strikes were numerous and costly to employers, for the loss arising from any concessions to labor were insignificant compared to those resulting from failure to continue production at a steady pace. Individual workers dissatisfied with conditions prevailing in their establishments had only to "walk around the corner" in order to secure more attractive employment. Employers consequently were faced with the problem of retaining their employees in the face of unprecedented competition for labor; it was but natural, therefore, that the stress on driving labor through the threat of discharge should be replaced with other devices. They found that other, fundamentally different, tactics had to be employed if they would keep their factories going. It was in such an environment that personnel management arose.

THE ECONOMICS OF LABOR TURNOVER

Losses incidental to the stoppage of production in the War period centered the attention of management on the problem of labor turnover which hitherto had attracted but little attention. Management became aware of the fact that the constant hiring and firing of men was a very expensive process and presented a problem which efficient management had to solve.

Labor turnover may be defined as the change in the personnel of the working force, the rate of turnover being determined by the ratio of the total number of separations from the pay roll during a given interval of time to the average working force. Thus, if the average working force in a factory were 5,000 men and if 10,000 men left the pay roll, voluntarily or otherwise during the year, the turnover rate would be 200 per cent.⁸

High rates of labor turnover are expensive; it is impossible, however, to measure the cost exactly since a large part of it is absorbed into the general overhead cost. We may, however, indicate some of the elements which enter into the cost of labor turnover. There is, first of all, the problem of maintaining an employment office, the size and complexity of which will naturally depend upon the number of workers who are hired in the course of the year. Second, there are the clerical costs incidental to removing old names and adding new ones to the pay roll. Third are the costs of training the new workers. Even unskilled work requires a period of "breaking in," however brief; consequently there arises a need for instructors. If the work is semi-skilled or highly skilled and calls for a protracted period of training, the loss to management from turnover in this respect alone is not inconsiderable. As we shall note in the next chapter, training methods vary from plant

⁸ See, for example, Don D. Lescohier, *The Labor Market*. The Macmillan Company. New York. 1919; Sumner H. Slichter, *The Turnover of Factory Labor*. D. Appleton-Century Company. New York. 1919; Paul F. Brissenden and Emil Frankel, *Labor Turnover in Industry*. The Macmillan Company. New York. 1922.

to plant, there being many establishments in which the new worker is absolutely nonproductive during the training period. The wages he receives during this time are properly chargeable to turnover. But even if the training is conducted "on the job," it may be presumed that the worker does not quite earn his wages until he has mastered the work; here, too, are costs of turnover. The machines which are maintained for training purposes and the materials which are consumed must also be reckoned. The greater degree of supervision required in the case of new men is also an element to be counted. And of equal, if not greater, importance are the slowing down of production, the increased accident rate, greater spoilage of materials, and greater damage to machinery to be expected of inexperienced men.⁹ It has often been estimated that the cost of turnover per man ranges from \$50 to \$200, depending upon the type of work, the length of the instruction period, and so on. Remembering that any figure is only a rough approximation at the very best, it is still worth pointing out that the saving effected through the reduction in turnover could be very great.

It is not meant to imply that all turnover is undesirable from management's point of view or even that if it were that it is within management's power to eliminate it. Many separations from the pay roll are unavoidable. Workers die, or are hurt, or retire, or move away from the town. Or business may be bad so that a reduction in the working force is necessary. Moreover a certain minimum of turnover is essential to the most effective operation of any establishment. A few new faces, a few new ideas, may be necessary to instill new life into an organization; and there are times in the life of any business when management feels that a house cleaning is in order. But the desirable and the unavoidable turnover constitute a small portion of the total; prudent management, aware of the economies to be obtained by reducing or eliminating turnover attributable to other factors, has tried to grapple with the problem.

Separations from the working force may be either voluntary or involuntary. In the former class belongs the case of men who leave their jobs because of dissatisfaction with wages, hours, or working conditions, because the job offers no opportunity for advancement, because it is not steady work, because the work is not interesting, or because they cannot get along with their superiors and with their fellow workers. Other establishments may offer more attractive terms of employment, or the worker may decide to leave the industry permanently and adopt a new vocation. The industrial unrest which is especially characteristic of the United States often manifests itself in a quitting of jobs for no definite reason. The worker "isn't satisfied" and

⁹ For an elaborate description of the costs of labor turnover, see Ordway Tead and Henry C. Metcalf, *Personnel Administration*. 2d Ed. McGraw-Hill Book Company, New York. 1926. Pp. 283-85.

has a vague feeling that he can improve himself in another industry or another locality.

On the other hand, management often contributes to turnover by discharge. The worker may be careless at his work and spoil materials and machinery. He may be incompetent. He may be a frequent absentee or habitually late for work. His insubordination may interfere with the maintenance of factory discipline. He may be addicted to alcoholism. He may be dishonest. He may be a troublemaker. For these and other reasons the worker may prove unsatisfactory. Then there are other factors, such as changes in the volume of business, which cause turnover though the worker himself is not at fault. It makes little difference, in the last analysis, just what the cause for turnover is. Whether it originates with management or with the men, it is expensive.¹⁰

ANTIUNIONISM

The World War period witnessed an unprecedented growth in trade-union membership. Not merely did the old-line unions make significant additions to their membership, but new unions arose in industries which hitherto had successfully resisted attempts at organization. That employers found this development distasteful goes without saying; so long as the War "boom" lasted, however, and so long as the Wilson Administration was able, through the various governmental labor boards, to prevent any concerted attacks on labor organization, there was not much that employers could do about the situation. With the end of the War, and especially with the collapse of the postwar prosperity, many employers resolved to fight unionism. The struggle proceeded simultaneously on two fronts. On the one hand, attempts were made to eliminate unions through the establishment of open shops, the adoption of yellow-dog contracts, and the other belligerent tactics which we shall describe in a later chapter. On the other hand, many employers found in personnel management a useful weapon for an indirect war on independent labor organization. Here the strategy was to win workers away from the unions through personnel activities, to improve conditions in the plant, and to allay labor discontent to the point where workers would no longer have an incentive to organize. In this program employee-representation plans or company unions played a significant role.

THE NEW CAPITALISM

The decade of the 1920's witnessed also the development of an attitude of management which has sometimes been called the "new capitalism." It

¹⁰ *Ibid.*, p. 282.

was argued that the interests of labor and of capital were identical and that it was the duty, and to the interests, of the employer to strive toward a higher standard of living for his employees. Considerable stress was placed upon high wages as a solution for labor difficulties. Profit-sharing plans, bonuses, employee stock-ownership systems were widely advertised as enlightened approaches by management. Such devices were generally incorporated in, and commonly arose out of, personnel departments; and it was believed in some quarters that a new era had dawned for American labor. The advent of the depression proved that this optimism was, at the least, premature, for many of the plans adopted at the height of prosperity were summarily curtailed or dropped altogether when business volume declined and profits disappeared. Nevertheless, the philosophy of the new capitalism is important for an understanding of the activities of personnel departments.

PERSONNEL MANAGEMENT

The essential difference between scientific management and personnel management or administration is that the latter, ideally regards the worker as the center of activity. He is viewed as a human being with human qualities and aspirations. Scientific management, on the other hand, attempted to reduce the worker as nearly as possible to the status of a robot with automatic movements and reactions.

At the very outset, personnel managers discovered that the worker's mental habits were of the greatest importance to industry, and they set themselves to discover also the prime impulses to industry and interest on the part of the workmen. Many of the early writers on the subject insisted that most of industrial discontent could be eliminated if the worker were only treated like a human being; thus Whiting Williams's *What's on the Worker's Mind* stressed the need for understanding industrial psychology and for arousing the worker's interest in his work. Other writers complained of the great impersonality in industry, the fact that workers were known by numbers instead of by names in many factories, that their feelings and aspirations were not taken into consideration by management. They did not urge paternalism as the remedy; on the contrary, they maintained that, however, well disposed it was, paternalistic management was un-American and undesirable. What was needed was a system of management of production which would plan, supervise, direct, and co-ordinate activities "with a minimum of human effort and friction, with an animating spirit of co-operation, and with proper regard for the genuine well-being of all members of the organization."¹¹

But lest there should be some misunderstanding about the nature of per-

¹¹ *Ibid.*, p. 2.

sonnel administration in view of the foregoing pronouncements, it should be kept clearly in mind that from management's standpoint, the chief, if not the sole, justification for personnel activities is that they lead to greater efficiency in production and go far to insure the reduction of labor turnover since they aim to secure and retain stable working forces composed of efficient and contented workmen. While other motives occasionally have operated to push management in the direction of personnel work, such motives have generally been distinctly subordinate to the financial drives. Particularly is this true in the case of large corporations with thousands of absentee owners. While management's responsibility to such owners is more apparent than real, management has on the whole been unwilling to make large outlays for personnel work unless there was some basis for believing that the work would more than pay for itself in improved performance by the employees. That it had no method of measuring results accurately was of no great importance from management's standpoint; apparently, it was sufficient in the majority of instances to show that turnover had been reduced and that the workers were contented, the latter being evidenced chiefly by the absence of labor organization.

To some employers, personnel activities are financially worth while because they are used as a smoke screen for low wages, long hours, and undesirable working conditions. Such employers are seldom troubled with convictions as to their obligations to their employees or to society; personnel administration is adopted because it pays—and pays handsomely. But even to the majority of employers who do not engage in personnel work as a substitute for adequate working conditions, there must be some evidence of a worth-while return.

This phase of personnel work is of the greatest importance in evaluating its success in dealing with labor. The manager of the personnel department, or the executive in charge of labor relations, is not free to do as he pleases or to carry out policies he may think desirable. From the very beginning, he is under the domination of the financial executives who may or may not approve of the outlays called for by the personnel program. It is not, then, a question of what is needed for an adequate and enlightened labor policy, but rather a question of how far the heads of the business are willing to go. These are likely to be concerned with short-run considerations. Thus, during periods of good business, they may be willing to spend large sums on their labor policy; at other times the prospect of losses causes them to retrench in every possible direction, and the axe often falls heavily on the personnel work. This has been the typical experience of American industry during the depression years. One firm after another curtailed its work until often only the skeleton remained.

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QUESTIONS

1. Modern industrialism compels the adoption of a comprehensive labor program. Discuss.
2. Discuss the philosophy of scientific management.
3. What contributions did Taylor and his followers make to modern industry?
4. What is meant by labor turnover? How is it measured?
5. Discuss the costs of labor turnover.
6. What is meant by the new capitalism? What effect did it have on the labor policies of American employers?
7. Discuss the effects of the World War on employers' labor policies.
8. What criticisms did organized labor make of scientific management?
9. How can high wages be consistent with low labor costs?
10. What is the labor problem from the employer's point of view?

PERSONNEL ADMINISTRATION

AND

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WELFARE WORK

IN ANALYZING personnel activities in American industry, one is struck by the extreme variations to be found in different plans and in different industries; in some cases the management seems to have been thoroughly "sold" on the personnel idea and to have introduced all sorts of plans and programs; in others the few activities revolve largely around the selection and placement of workers, in still others there are hardly any personnel functions at all. Several different explanations may be advanced for this situation. First, as previously suggested, there are substantial differences in the philosophies of different industrial leaders, some preferring the older ways and others insisting that industry has new responsibilities and new functions which they are likely to carry out in a rather complete personnel program. Second, personnel work is expensive, and the amount of money which a corporation can spend on it depends upon the company's financial position; a firm with assets of hundreds of millions of dollars is able to do more in this way for its employees than the firm with assets of only a few thousands. Third, personnel work must be "made to order" not "ready to wear," that is, if the work is to have any real vitality and any chance of success, it must be constructed around the workers and their problems. The program of any company cannot be fashioned in a laboratory and then applied to a particular set of workers; rather, the workers themselves must first be carefully studied if the program adopted is to be suitable to their needs—else the best intentions in the world are almost certain to go for naught. It should be evident, for

example, that an athletics program has much more chance of success in a small community where all the workers live than in a metropolis where the workers' homes are far removed from their jobs. Similarly there is much more validity to a social and recreational program for a group of culturally homogeneous workers than there would be for a polyglot force. Various factors peculiar to the industry, its location, and its workers must thus be considered in establishing any individual plan: native Americans will not respond to the activities prescribed for a group of immigrants, and vice versa. In the same way, highly skilled workers with some degree of education require a different approach from that suitable for unskilled and ignorant workers.

With these factors in mind, let us look at personnel administration as it might be in a plant of some size. We are here concerned not with a description of any single scheme but rather with a general overview of the various sorts of personnel activities. The arrangement of functions below is by no means universally accepted as the most desirable, but it is representative of personnel programs in American industry.

SCOPE OF PERSONNEL WORK ¹

The five classes of personnel activities are described as divisions; this is not meant to suggest that in any but very large enterprises there actually will be divisions devoted solely to each of these five, but rather that the functions contained within any division are separable from those in any other.

Employment division. The employment division is charged with the duties of recruiting the labor supply, of placing the men, and of effecting transfers and promotions. It makes contacts with the various sources of labor supply, interviews job applicants, supervises various tests for aptitude, introduces new employees to their work, follows them up, instructs them as to company rules and policies, controls promotions and transfers, tardiness and absenteeism, and has general supervision over labor turnover.

Health, safety, and sanitation division. This branch of the personnel department gives physical examinations to applicants for jobs, administers first aid in case of accidents, follows up accident cases, and diagnoses cases of ordinary illness and occupational disease. It also supervises the rest rooms, engages in the promotion of personnel hygiene and the prevention of epidemics, makes studies of fatigue prevention, and often conducts a visiting

¹ The classification of personnel functions given here is based upon the table contained in Gordon S. Watkins, *Labor Management*. McGraw-Hill Book Company. New York. 1928. P. 128.

nurse and home service. Some establishments have a dental service which, aside from the preliminary examination, gives emergency treatments, diagnoses serious cases, makes recommendations to outside dentists, and promotes dental hygiene.

The safety service determines safety standards for the shop and has control over the mechanical safeguards. An important part of its work is safety education and publicity, including the organization and direction of safety committees, and the supervision of awards and prizes for accident-prevention work. It investigates accidents resulting in lost time and makes statistical analyses of accident frequency and severity.

The sanitation service supervises the plant and grounds; it has charge of community inspection and clean-up, looks after the water supply, inspects and controls the locker rooms, washrooms, and lavatories, and has charge of the janitor and matron service.

Education, training, and research division. Under this division are grouped the education and training and research services. Job instruction, the organization and management of special technical courses, apprentice training, Americanization courses, training courses for promotion, lecture and library services, and plant publications are among the functions of the division. Its activities also include job analyses, time and motion studies, investigation of wage systems, and research in personnel problems and management.

Welfare service division. Among the functions of this division are loan and savings fund administration, supervision of sickness benefit, pension, and insurance funds, investigation and control of housing facilities, athletic activities, social and recreational activities, legal and financial aid and advice, supervision of lunchroom and cafeteria service, administration of vacation plans, and so on.

Joint representations division. This division hears complaints and adjusts grievances. It is concerned with the regulation of employment conditions, the promotion of plant efficiency, the control of plant discipline, the formulation of shop rules, direction of shop committees and work councils, and so on.

The student should note that all of the activities here mentioned fall into two general groups: (1) activities concerned with securing a competent working force, and (2) activities concerned with retaining this competent force as long as necessary. He should note further that these groups cut across some of the divisions: the education and training division, for example,

undertakes the training of new employees as well as the training of old employees for promotion. Similarly, the health and safety division gives physical examinations to applicants for jobs and looks after the health of workers after they are hired. And, while the employment division is chiefly concerned with hiring the worker, it is also charged with the handling of promotions and transfers, with absenteeism and tardiness, and with discharge. For our purposes, it will be best to treat first the problems involved in getting the working force and, second, the problems involved in keeping it.

HIRING THE WORKER

Few aspects of management's labor policies have undergone more drastic transformation during the past several decades than that of hiring workers. Formerly hiring was largely a haphazard and accidental process. Signs may have been hung on the factory gates saying "Men Wanted" and applicants were interviewed briefly by a busy foreman who had no time to inquire carefully into the fitness of the applicant. Applicants may have been secured from newspaper advertisements or employment agencies. In each instance, the process meant delay, inconvenience, and cost. Far too often, the incompetents hired by this hit-or-miss method had to be dismissed. The foreman in charge of hiring was not likely to be competent at making snap judgments, and often his personal prejudices as well as his economic interests may have been contrary to the company's desire to get and keep good men. For example, some unscrupulous foremen had working arrangements with private employment agencies by which they shared the fee paid by the applicant to the agency. Naturally, people sent by this agency were hired in preference to other and possibly more competent workers sent from other sources. It was a significant step forward to take the responsibility of hiring away from the foreman and to centralize all plant hiring in a personnel division especially equipped for the purpose; equally significant was the adoption of new hiring procedures.

Job analysis. Job analysis has been defined as "a complete and accurate analysis, comparative classification, and an exact description of all the factors entering into a job." It "may also be considered as the who, what, how, when, where, why, and for whom of the job."² The analysis may take the form of a description of the job and statements concerning the physical, mental, and other requirements for workers holding such a job; or it may be a much more elaborate affair involving the breaking down of each job into

²E. Walters, *Applied Personnel Administration*. John Wiley & Sons, Inc. New York. 1931. P. 147.

its component parts.³ The data contained in a job analysis will include factors such as the following: name of the job, the job symbol, the department symbol, the number of workers, their sex, the grade of skill; the position, whether sitting, standing, walking, kneeling, and so on; the degree of physical strength required, whether much or little or moderate; the size of the material, whether heavy or light, large or small; the value of material in previous labor, whether low, medium, or high; disagreeable factors connected with the job, such as dirt, oil, wet, hot, cold, acid, or long hours; the accuracy required, whether coarse, medium, or close; the speed required, whether slow, medium, or rapid; the degree of dependability required; whether the work flowed steadily or was intermittent; whether the job trained for a better position; whether a kit of tools was required; whether a knowledge of English was necessary; whether, how much, and what kind of, experience was required; whether ability in calculation was required; whether initiative was required; the length of the normal learning period; the wage and the normal working hours; the education required; and so on.⁴ Job analyses for typists would naturally call for such matters as the speed required, the accuracy necessary, knowledge of English and foreign languages, and so on. Other analyses might fix physical requirements such as height and weight, hearing, eyesight. In addition, there may be various social requirements such as personality, adaptability, dynamic qualities. Generally speaking, the analysis should omit no feature of the job which would be relevant in hiring someone for it. It is obvious that if a job is carefully analyzed many mistakes in hiring can be avoided, for the analysis specifies the qualities which the applicant for the job should have. Job analysis, moreover, is of undoubted value in the standardization of wage rates throughout the factory.

The job analysis may be prepared by anyone familiar with the work, such as the foreman or the plant superintendent. Many companies prefer, however, to have the man actually doing the work make out the analysis by answering a questionnaire which is later examined by a supervisor. This method has the decided advantage of getting as close to the job as possible and avoiding many of the erroneous impressions which others may have as to the nature of the work. At the same time the checking of the answers by the foreman eliminates the undue emphasis which the worker is likely to place on his particular job.

Undoubtedly it was Taylor's work which first directed attention to job analysis; his insistence on accuracy and detailed information in place of guess work required him to make a thoroughgoing investigation of the job

³ George R. Hulverson, *Personnel*. The Ronald Press Company. New York. 1927. P. 47.

⁴ The analysis given here is based on the form used by the Youngstown Sheet and Tube Company as given in Walters, *op. cit.*, p. 155.

in question. And, of course, systematized information about jobs could scarcely be secured in a large organization without some such procedure.⁵

Recruitment. Armed with the job analysis and job specification,⁶ the employment department is in position to begin its recruiting activities. Obviously, in times of labor scarcity, recruiting will receive much more attention than in times when workers are plentiful, but personnel managers are always concerned over the development of a regular supply of capable workers. It is interesting to note that in the recent literature on public personnel administration—personnel administration for government employees—there is great stress on proper recruitment as the *sine qua non* of efficient operation even though present conditions in the labor market are causing hundreds of thousands to seek government employment. For after all, it is not just workers that are wanted but competent workers; in addition, the company may want to develop regular sources of labor supply against the day when a labor shortage may actually arise.

Where does an employment department look for prospective workers? The answer to this depends largely on the company and the jobs to be filled, but there are certain general procedures which are rather widely followed. Many companies encourage their present staff to suggest names of relatives and friends who wish to become employees; this practice is based on the theory that the workers' goodwill is thereby gained and that at the same time desirable prospects are recruited because workers are not likely to take the risk of recommending someone who later proves to be undesirable. To an increasing extent personnel departments are turning to the schools for their working force. This is particularly true in the case of technical jobs (as in engineering), but the schools are also supplying a large proportion of clerical employees and semiskilled factory labor. Some personnel departments value their connections with this source of labor so highly that they periodically send a representative to the school to interview prospective employees whether or not jobs are available at the time; principals and teachers are often asked to watch for especially apt pupils. Since the schools, for their part, are naturally eager to place their graduates in positions as soon as possible, there has developed an *entente cordiale* between school and industry which both find advantageous.

Employment agencies are not regarded very favorably by progressive personnel departments chiefly because, since the agencies' primary if not sole concern is the fee paid by the applicant, his fitness for a particular job is a matter of chance. However, if the agency is known to be reliable, and

⁵ Walters, *op. cit.*, p. 148.

⁶ The specification is a summary statement of the detailed items contained in the analysis.

especially if it specializes in the type of workers required (for example, technicians), its help may be sought by the personnel department.

Advertisements in newspapers and magazines are occasionally resorted to, particularly if the job is difficult to fill. Professional periodicals and technical journals commonly have a "help wanted" column or the equivalent. Since the advertisement should be placed in a medium likely to reach desirable persons, different types of jobs are advertised in different places.

Some companies encourage former employees who left voluntarily or were dismissed through no fault of their own to apply for work. Such employees are often felt to be most desirable since they are already familiar with the plant.

As for job applicants who come in on their own initiative, there is considerable variation in attitude. Some personnel managers distrust such people and will not consider them. Others, on the contrary, deeming it a desirable trait to look for a job when there is none in sight, welcome those with sufficient enterprise to apply, though checking their references most carefully.

Testing. The sources of labor supply furnish the raw materials; testing determines whether the raw materials are suitable. The tests may be of various sorts—intelligence tests, aptitude tests, trade tests, special tests, and so on.

Intelligence tests attracted a good deal of attention during the World War, though they had been known for at least two decades prior to it. They are intended to measure general abilities and general qualities, such as the ability to think quickly, alertness, ability to detect errors, ability to reason clearly and concisely, and the like. Their use in industry appears subject to certain limitations. They are complicated, they may fail to measure the particular type of intelligence required for the job, and their results may be affected by conditions under which the tests are conducted.⁷

Aptitude tests are intended to measure special rather than general abilities. They are supposed to disclose whether the applicant has the type of mind or skill which will enable him to learn the work in question and perform it successfully. Tests of this sort are probably more valid than the general intelligence tests, for they narrow considerably the qualities or abilities to be measured. Much success has been attained with tests of special capacities or qualities, such as tests of visual acuity, color sensitivity, skin and touch sensitivity, and the like.

From the employer's standpoint the most satisfactory results are probably obtained from the trade tests, which may be practical or written. In

⁷ Dale Yoder, *Personnel and Labor Relations*, Prentice-Hall, Inc. New York. 1938. P. 147.

the former, the applicant is given an actual piece of work to perform and is hired or rejected upon that performance. If it is a written test, the questions will be concerned with the various phases of the job and with a knowledge of the processes. Trade tests have the obvious advantage of determining more or less definitely whether the worker can do the job; they also eliminate the inferences which have to be drawn from either the general intelligence or the aptitude test. One important qualification, however, should be made. It is the practice of many companies to make all their promotions from the ranks; as one bank personnel manager said, "When we hire messenger boys, we are hiring potential officers of the bank." From this point of view, the ability to do a particular job may be less important than the capacity to learn about more intricate processes and the ability to grasp abstract concepts of the business. The latter cannot be measured by trade tests; if measurable at all, it must be by the use of aptitude or general intelligence tests.

There is no reliable evidence as to the extent that trade or intelligence tests are being used in industry. A recent study indicates, however, that only a small proportion of American employers make use of these tests. Of 435 companies, 371 give no trade tests whatever, 58 limit the tests to skilled workers, while 3 extend them to all employees. Intelligence tests seem to be used even more sparingly, for out of 437 companies, 412 gave none, 11 gave them to skilled workers only, 5 to the supervisory group only, while 7 companies extended them to all employees.⁸ Among the factors which are probably responsible for this situation are the costs of giving and grading the examination and the questionable validity of many of the tests.

Interview. The millions of words written on the technique of interviewing applicants for jobs cover such matters as the furniture in the room, the attitude of the interviewer, whether the interviewee should be seated, the subjects to be discussed, methods of evaluation, and the duration of the interview. In the last analysis, the interview determines, in the overwhelming majority of cases, whether the applicant is to be hired, and the results of the interview must necessarily be subjective. That there is justification for the use of the interview, even where trade and intelligence tests are used, is readily granted since there are many personal qualities, of great importance to the enterprise, which cannot be ascertained through other methods. But, if it is a necessary instrument in selection, it is also one which must be administered carefully by selected people; otherwise, the purely personal prejudices of the interviewer will determine its result.

⁸F. Beatrice Brower, *Personnel Practices Governing Factory and Office Administration*. National Industrial Conference Board, Inc. New York. 1937. P. 31.

in question. And, of course, systematized information about jobs could scarcely be secured in a large organization without some such procedure.⁵

Recruitment. Armed with the job analysis and job specification,⁶ the employment department is in position to begin its recruiting activities. Obviously, in times of labor scarcity, recruiting will receive much more attention than in times when workers are plentiful, but personnel managers are always concerned over the development of a regular supply of capable workers. It is interesting to note that in the recent literature on public personnel administration—personnel administration for government employees—there is great stress on proper recruitment as the *sine qua non* of efficient operation even though present conditions in the labor market are causing hundreds of thousands to seek government employment. For after all, it is not just workers that are wanted but competent workers; in addition, the company may want to develop regular sources of labor supply against the day when a labor shortage may actually arise.

Where does an employment department look for prospective workers? The answer to this depends largely on the company and the jobs to be filled, but there are certain general procedures which are rather widely followed. Many companies encourage their present staff to suggest names of relatives and friends who wish to become employees; this practice is based on the theory that the workers' goodwill is thereby gained and that at the same time desirable prospects are recruited because workers are not likely to take the risk of recommending someone who later proves to be undesirable. To an increasing extent personnel departments are turning to the schools for their working force. This is particularly true in the case of technical jobs (as in engineering), but the schools are also supplying a large proportion of clerical employees and semiskilled factory labor. Some personnel departments value their connections with this source of labor so highly that they periodically send a representative to the school to interview prospective employees whether or not jobs are available at the time; principals and teachers are often asked to watch for especially apt pupils. Since the schools, for their part, are naturally eager to place their graduates in positions as soon as possible, there has developed an *entente cordiale* between school and industry which both find advantageous.

Employment agencies are not regarded very favorably by progressive personnel departments chiefly because, since the agencies' primary if not sole concern is the fee paid by the applicant, his fitness for a particular job is a matter of chance. However, if the agency is known to be reliable, and

⁵ Walters, *op. cit.*, p. 148.

⁶ The specification is a summary statement of the detailed items contained in the analysis.

especially if it specializes in the type of workers required (for example, technicians), its help may be sought by the personnel department.

Advertisements in newspapers and magazines are occasionally resorted to, particularly if the job is difficult to fill. Professional periodicals and technical journals commonly have a "help wanted" column or the equivalent. Since the advertisement should be placed in a medium likely to reach desirable persons, different types of jobs are advertised in different places.

Some companies encourage former employees who left voluntarily or were dismissed through no fault of their own to apply for work. Such employees are often felt to be most desirable since they are already familiar with the plant.

As for job applicants who come in on their own initiative, there is considerable variation in attitude. Some personnel managers distrust such people and will not consider them. Others, on the contrary, deeming it a desirable trait to look for a job when there is none in sight, welcome those with sufficient enterprise to apply, though checking their references most carefully.

Testing. The sources of labor supply furnish the raw materials; testing determines whether the raw materials are suitable. The tests may be of various sorts—intelligence tests, aptitude tests, trade tests, special tests, and so on.

Intelligence tests attracted a good deal of attention during the World War, though they had been known for at least two decades prior to it. They are intended to measure general abilities and general qualities, such as the ability to think quickly, alertness, ability to detect errors, ability to reason clearly and concisely, and the like. Their use in industry appears subject to certain limitations. They are complicated, they may fail to measure the particular type of intelligence required for the job, and their results may be affected by conditions under which the tests are conducted.⁷

Aptitude tests are intended to measure special rather than general abilities. They are supposed to disclose whether the applicant has the type of mind or skill which will enable him to learn the work in question and perform it successfully. Tests of this sort are probably more valid than the general intelligence tests, for they narrow considerably the qualities or abilities to be measured. Much success has been attained with tests of special capacities or qualities, such as tests of visual acuity, color sensitivity, skin and touch sensitivity, and the like.

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Physical examinations. From the available data it appears that a very considerable number of American firms give physical examinations to all new employees. In a survey of the personnel practices of employers with a total of about 4,500,000 employees, it was found that 83.8 per cent of the employees worked for companies which required a medical examination at the time of hiring.⁹ Many reasons are given for the prevalence of this practice. First, the results of job analysis are not likely to be useful unless they are supplemented by a physical examination. Of what value is it to specify that a particular job requires great muscular exertion or prolonged effort if the men who are hired for the job are not tested to find out if they are physically capable of doing the work? Second, it is important to protect the health of the force by examining new employees for contagious diseases. Third, workers may be suffering from bodily defects which may make them peculiarly susceptible to industrial accidents. Fourth, workers may be in such poor physical condition that they will readily succumb to occupational diseases—it would be virtual manslaughter to permit a man to work in a quarry who has an advanced case of silicosis. From this point of view, medical examination is undoubtedly profitable for the employer, especially if it prevents an increase in his costs for compensation of industrial accidents and occupational disease.

To most workers the physical examination is obnoxious because they regard it chiefly as a device for eliminating those whom the company does not intend to hire or as a device to beat down the wage rate by offering to hire the worker at a lower wage because he is "physically defective." Here and there, a company may feel an obligation to place handicapped workers at employment suitable to their physical capacities.¹⁰ But the number of such companies is small indeed; for the most part, the worker who is not physically up to par is summarily rejected, and it is not surprising that a worker who may have spent months seeking employment should be violently opposed to medical examinations.

Introducing the man to the job. Personnel departments place great emphasis on the proper way to start the new employee on his career with the company. They insist that the man's goodwill can be gained immediately if the management takes pains to render the adjustment of man to job as pleasant as possible. Accordingly, it is the practice in many companies to introduce the new employee to the foreman and to his fellow workers so that friendly relations can be immediately developed. The foreman is asked to keep the new man under observation, not for purposes of discipline but

⁹ National Industrial Conference Board, *What Employers Are Doing for Employees*. New York, 1936. P. 17.

¹⁰ Tead and Metcalf, *op. cit.*, p. 101.

to help him over the rough spots which are almost inevitable in a new job. The personnel department in various ways follows the progress of the recruit until he becomes thoroughly adjusted to the plant environment.

An important phase of getting the man properly started is the explanation of the shop rules and routine. In this respect practice varies from company to company. Many distribute to each new employee a handbook of company rules and procedures; the trouble with this method is that workers often do not take the time to read the handbook. Other companies have the new man instructed orally in the shop rules, either by the foreman or by a representative of the personnel department. It is obviously important for the employee to know what the company's attitude is towards lateness and absenteeism, towards garnishment or assignment of wages, charges for tool breakage and loss, and the numerous other details of factory life which the company sees fit to regulate. But whether the worker learns the rule from a handbook, a bulletin board, pay-roll inclosures, or by word of mouth, it is desirable to keep down the number of rules to a minimum, for the more numerous the rules, the harder it is to learn them and the easier it is to break them. If, therefore, the company wishes to inculcate in its workers a serious regard for its wishes in shop procedures, it would be wise to lay down as few rules as possible and enforce these rules firmly but intelligently.

Some companies make a definite effort to explain to the worker the whole process of production so that he will understand his part in its relation to the whole. The personnel program of the company may also be described at length so that the worker will become familiar with the various activities and prepare to participate in them.

Training the worker. The increasing mechanization of industry has tended to place an ever-larger proportion of jobs in the category of unskilled work for which either no or only slight training is required. There are still many jobs, however, for which months and even years of careful instruction are required before the worker attains the requisite skill and speed; a shortage of workers for such jobs is likely to prove very inconvenient to the employer, and such a shortage may develop even at a time when there are millions of unemployed men and women. For example, in a survey made in 1937 of conditions in 404 metalworking companies with a combined labor force of nearly half a million, 26.5 per cent of the companies reported a serious shortage of skilled labor and 52.2 per cent of the companies reported that they could not find competent skilled labor for the available jobs.¹¹ It is to guard against just such a contingency that many companies have embarked on training programs.

¹¹ National Industrial Conference Board, *Training for Industry*. New York. 1937. P. 17.

Learning on the job. In a very large number of cases, the only form of instruction available is that which assigns the worker to an experienced craftsman who is supposed to teach him the trade. Probably the oldest method of instruction and possessing many of the characteristics of the old craft guild system, it is administered relatively simply and appears to be cheap because it does not involve the hiring of teachers, the use of special machines for learners, additional space, and so on. Training on the job is frequently criticized, however, because of its slowness and the expense involved when a skilled mechanic must spend much of his time in unproductive teaching.

The vestibule school. The vestibule school may be described as a laboratory run by the company in which the prospective worker is instructed in the job.

Under this type of training a space in the plant is set aside for the purpose, machinery is installed, instructors are provided, and new employees are given a specialized training to fit them to perform certain machine operations. The aim is not to train all-around craftsmen but to teach the candidate to operate a particular type of machine so that as soon as possible he can be placed on production work.

The vestibule school occupies an intermediate position between training on the job and systematic apprenticeship. Collateral classroom work may be included but is not necessarily a part of the vestibule school. More than one operation or the use of more than one machine may be taught to each student, but primarily the object is to provide sufficient instruction in performing a particular type of work to enable the employee to qualify as soon as possible as a production worker.

Various advantages of the vestibule method over training on the job are urged. Instruction can be standardized and include only the best practice. Those who have a natural bent for teaching can be detailed for this work. Regular production workers and foremen, relieved of training responsibilities, can devote their full attention to production work, thereby raising general productive efficiency.¹²

Systematic apprenticeship. Apprenticeship was a leading characteristic of the craft guild. The young learner was bound to a master for a period of years and was expected to learn all details of the craft before he was eligible to become a journeyman. In more recent years apprenticeship has been closely tied to the trade-unions, which customarily required an apprenticeship of four or five years before the worker was admitted to the ranks of the journeymen. The apprentice training in both instances involved not the learning of a single phase of the work but rather its complete mastery; the apprentice was supposed to be transferred from one part of the job to another in accordance with his speed in learning. The coming of the machine has, of course, considerably reduced the number of occupations for which

¹² *Ibid.*, pp. 8-9.

prolonged training is required. But the need for skilled workers has caused some companies either alone or in conjunction with independent labor organizations to embark upon a program of apprentice training. The Ford Motor Company, whose work in this respect is outstanding, has an apprentice school, a trade school, and a training school, most of the apprentices being graduates of the trade school.

The Trade School enrolls boys between the ages of 12 and 15. It is operated on a cooperative basis and until the academic work is completed one week is spent in class work and the following two weeks in shop work. During the summer each boy under 18 is given three weeks' vacation, and one additional week at Christmas. This provides 14 weeks of class work, 34 weeks of shop work and 4 weeks of vacation. Boys are paid 15 cents per hour at entrance, their pay being adjusted eight times a year, according to accomplishment. The maximum rate is 60 cents.

All work done in the Trade School is productive work. Younger boys repair small tools and safety goggles. All the precision tools of the company are repaired by boys who have had more experience. Older boys engage in the manufacture of tools—cutters, reamers, drills, arbors, and special tools.

One man devotes his attention to routing the boys through the shop so that they may have a varied experience in many of the twenty-five departments. Boys who are adapted to tool-making have their work apportioned about as follows: shaper, three months; lathe, four months; milling machine, five months; grinder, five months. When they are graduated at 18 they have a good grounding in mechanics. An idea of the quality of their work is indicated by the fact that spoilage on fine tool work, involving accurate dimensions in many cases from 0.003 inches to 0.0001 inches and finer, has averaged less than 1% on an average output in excess of one million hours.

Academic training is closely correlated with the shop work and includes mathematics through plane geometry, shop theory, mechanical drawing, English, physics, general chemistry, qualitative and quantitative analyses, metallography, civics, economics, and geography.

All apprentices must attend class work provided by the school. Any Ford employee may attend classes for which he is qualified, but only apprentices receive the shop instruction. Apprentices in the tool and die rooms, electrical department, heat-treat department, and power house now number 1,600. Shop instructors have full control of the apprentice during his training period in the shop. The instructor assigns a student's first task, sees that he has work to give him progressive training, transfers him to other types of work, keeps a record of his work in both class and shop, and recommends him for pay increases according to his progress. The shop instructor shows the apprentice as much as may be necessary about the machine he is to operate, sets up the job if necessary, and supervises the work of the apprentice throughout.

In June, 1935, the Ford Motor Company opened the Ford Training School for about 200 high school graduates. The chief purpose is to give boys who wish to enter industrial work an opportunity for a brief training of a few weeks or months before being transferred to a permanent location. Students receive \$22 per week and are given typical toolroom work suited to their ability. Those who appear particularly capable may be placed in the toolrooms as apprentices when there are openings. The Training School provides an opportunity to enroll 800

recent graduates of high schools annually who are absorbed by the Ford Motor Company in almost every department of its activities.¹³

Other types of training. A number of companies conduct their training activities in co-operation with schools in the community the latter providing instruction in academic subjects. An interesting development in recent years involves the very close co-ordination of school and factory; the students spend two or three weeks in school and the following two or three weeks in the factory, thus combining academic instruction with practical experience. Correspondence courses are also used occasionally through the co-operation of the company with the educational institution.

Training is by no means limited to new and young workers. Some of our largest companies have instituted in-service training courses to prepare workers for advancement. Instruction may take the form of regular classroom work supervised by the company or by an educational institution in co-operation with the company. Some companies encourage their workers to attend a technical school by paying their tuition in whole or in part.

In industries in which changes are taking place rapidly, stress is placed on keeping up to date through conferences, illustrated lectures, the circulation of reading matter, and so on.

An example of worker training is the American Institute of Banking, the educational division of the American Bankers' Association. Classes are held in many communities on economics, money and banking, corporation finance, bank management, trusts, commercial law, and related subjects. Elsewhere, work is carried on by means of correspondence courses, the lessons being corrected at the main office of the Institute. Successful completion of the course of study is attested by a certificate. Courses of this nature are valuable to bank employees who want to learn more about their work and want to move up in the organization. Recently there was established the Graduate School of Banking whose two weeks' session each year is attended by many bank officials from all over the country.

Transfer and promotion. A striking weakness in the employment policy of many companies is the absence of a systematic method of transferring workers from one department to another. Not infrequently some divisions of a business are running overtime while others are idle; in the absence of a system of transfer, one department may be laying off men while another is hiring new workers. This situation could be eliminated, at least where no special skill is required, by moving men from slack divisions to busy ones, thus avoiding the cost and inconvenience of unnecessary turnover.

A system of transfer may also be necessary for other reasons. Everyday

¹³ *Ibid.*, pp. 11-12.

work relationships bring people into close contact who are temperamentally unable to get along together. One workman, otherwise entirely satisfactory, cannot work well with his foreman; the foreman seems to have no trouble with any of the other members of the crew. To discharge either the worker or the foreman is obviously not a sensible solution, yet to keep them together merely aggravates the situation. Under these circumstances transfer is essential. In other cases a competent worker may want to be moved to some other division because he feels he would like the work more or because the prospects of advancement are brighter. Holding the man to his present job will only make him discontented and impair the quality of his work; transferring him would be to his and to the company's advantage. Since it is obvious that transfers are expensive and inconvenient, they should not be authorized for a mere whim.

Policies differ also in regard to promotion. Many companies fill the better positions by hiring men from the outside; many, on the other hand, prefer to recruit from the ranks. If the company has no one who will be able to fill a certain job satisfactorily, no one can criticize it for going outside. Such a policy consistently pursued is likely to prove of incalculable harm to the employees' morale, for no one can fail to recognize the implication that advancement will not reward hard work or mastery of the job. Probably the wisest practice establishes definite lines of promotion and systematic rewards for competent and conscientious service. Few policies are likely to prove as successful in retaining desirable men as promotion from the ranks.

To insure the equitableness of the promotions, it is highly important to institute a system of rating employees so that those with the best records will be advanced; it is well known, for example, that many companies have preferred to bring in an outsider in order to avoid the bad feeling likely to arise when a man in the ranks is advanced over his fellows without any apparent justification. This situation can be remedied by a rating system with which the employees are familiar and which is as objective as possible.

Discharge. Even the most carefully planned employment system is likely to miscarry at one point or other; no matter how great the precautions, people will occasionally be hired who cannot carry on efficiently. In addition, all sorts of personal situations and violations of shop rules, tardiness, or absenteeism, may arise which make separation desirable. Yet the great importance of the job to the worker and the desire to have the workers feel as secure as possible have led many companies to formulate definite rules for discharge; in such instances the major grounds for discharge include incompetence, insubordination, dishonesty, intoxication, irregular attendance, negligence, violation of rules, troublemaking, misconduct, laziness,

smoking in prohibited places, and so on.¹⁴ Of these, incompetence, insubordination, and intoxication are the reasons given most frequently.

More important than these matters is the question of who has the power to discharge. Terms like incompetence and insubordination require definition and are likely to mean quite different things when used by different people. A progressive personnel policy thus requires that additional safeguards qualify the power of discharge. Most companies still vest this power entirely in the hands of the foreman and the superintendent; sometimes the foreman has the right to discharge but the discharge must be approved by the superintendent. In a number of cases, the sole right to discharge lies in the personnel department, to which the foreman refers suggested discharges. Occasionally a joint committee composed of representatives of men and of management is entrusted with the power to discharge; in a few rare instances, the right is vested wholly in a committee of workers operating usually through the employee-representation plan or company union. That relatively little progress has been made in the direction of limiting the autocratic exercise of the power to discharge is not so much because of the lack of success of workers' committees as because of the reluctance of employers to yield a right traditionally associated with the prerogatives of ownership.

SERVICE AND WELFARE ACTIVITIES

Inasmuch as the number and nature of service and welfare activities vary from company to company, those described here are not to be regarded as descriptive of the program of any one company.

The prevention and care of industrial accidents. The enormous cost of industrial accidents has not gone unnoticed by many employers. While some have fought bitterly every legislative effort to prevent accidents or to ameliorate the lot of the injured, others have anticipated governmental regulation and have established standards, at least in safety work, far in advance of anything required by government.

Industrial accidents are caused by (1) the negligence of the employer; (2) the negligence of the worker; and (3) the processes and tempo of production. In regard to the last, it is improbable that any great reduction can be effected in the number of accidents arising from this source. In the manufacture of automobiles, in the processing of steel, in the mining of coal, in the construction of tall buildings, accidents are going to occur no matter how careful employer and employee may be. Fortunately, accidents caused by carelessness of employer and employee are not inevitable; a determined effort by all concerned will lead to a substantial reduction in their number.

¹⁴ Brower, *op. cit.*, pp. 73-74.

There are many things which management can do in this direction: guards around dangerous machines, clean and not overloaded floors, storage of inflammable materials in fireproofed compartments, open fire exits permitting rapid exit in emergencies, a check of buildings for possible structural defects, periodically tested equipment, and so on. In addition, workers should be instructed in the best and safest methods of performing their tasks and foremen cautioned to permit no deviation from the rules which might result in accidents.

In the first decade of this century, a safety movement was started in the United States which, beginning with the iron and steel industry, soon spread through other industries and resulted in the establishment of the National Safety Council. Numerous conferences, publications, exhibits, and the like, have made employers familiar with safety methods and industry as a whole has become accident-conscious. To enlist the interest of workers in their own safety, management has used various devices. In many plants illustrated notices on bulletin boards call attention to the serious nature of accidents and to the need for caution. Lectures accompanied by lantern slides are more vivid and probably more effective. Enclosures in the pay-roll envelopes are used to convey safety information, as do the columns of the various plant publications. One effective method is to stimulate workers' interest by means of safety contests among the several departments, a banner going to the department having the best record over a given period. Other companies have secured excellent results through safety committees consisting either of a group of workers, or workers in conjunction with supervisors; it is the function of these committees to make periodic tours of inspection, reporting to the company on defective equipment and suggesting possible improvements. These committees also serve occasionally as a medium for transmitting to the company the safety suggestions made by workers. It is the usual practice to change the membership of the committee regularly so that as many workers as possible will become familiar with the safety program of the company; changing membership also stimulates the workers to greater efforts in the direction of safety. Cash prizes or additional vacations with pay are sometimes awarded to individual workers with outstanding safety records. Companies which have made the most progress in the safety movement retain engineers whose chief if not sole function is to reduce accidents; the safety engineers characteristically operate in conjunction with foremen, superintendents, and plant managers. As might be expected, safety programs are more common in larger companies, a recent study indicating that while only 29.1 per cent of companies with fewer than 100 employees had such programs, 60.6 per cent of those with from 250 to 999 workers had them, as had 74.8 per cent of those with from 1,000 to 4,999

employees, 88.9 per cent of those with from 5,000 to 9,999 employees, and 84.9 per cent of those with 10,000 or more employees.¹⁵

To care for the accidents which do occur, some plants retain a full-time physician and a nurse and provide space and equipment for emergency treatment. First-aid kits are sometimes given the workers, together with instruction in first-aid methods. This type of instruction is most frequently given to workers where medical and nursing facilities are not readily accessible. Competitive first-aid exhibitions between departments usually arouse a keen interest in proper methods, especially if a prize is awarded the department which makes the best showing.

Does accident prevention pay? The experience of the United States Steel Corporation and of the American Car and Foundry Company, to mention only two examples, indicates conclusively that accident prevention is less costly than accident compensation.¹⁶

Protecting the worker's health. Physical examinations given to new employees prevent the hiring of workers with contagious diseases and the exposure of physically defective men to conditions in the factory which might make them seriously ill. In industries in which occupational disease is common, progressive employers have tried to take remedial measures; thus the use of wet drilling, of pneumatic exhausts, and of masks has been recommended for work which may otherwise lead to such respiratory ailments as silicosis.

But workers fall ill not merely from conditions peculiar to the occupation but also from the same factors that affect other people. What has management done in this respect? Many companies have met the problem by periodic physical examinations for their employees, so that any disease may be detected in its early stages. Sometimes, as in the case of food handlers, these periodic examinations are required by law. Where there is no definite re-examination system, a new examination may be given to workers being transferred from one department to another, to workers returning after absence due to illness, to those whose defective condition at the time of employment was not sufficiently serious to warrant their rejection but who are nevertheless in need of continued observation, and to the older employees whose health may have been impaired with the passing of the years. Workers frequently regard physical re-examinations with even more suspicion than they do the examination given at the beginning of employment, for they fear that the new examination will lead the employer to discharge them if their health has suffered. Although there are no doubt many instances in

¹⁵ *What Employers Are Doing for Employees*, op. cit., p. 49.

¹⁶ Watkins, op. cit., pp. 508-9.

which the physical examination has been used as a pretext to discharge employees, in most cases it has worked to the employee's benefit.

Apart from the physical examinations, other provisions are often made to protect the worker's health. The company medical staff, if there is one, always undertakes the treatment of emergency illnesses when they occur in the plant. If the illness is more serious, the medical staff may make diagnoses and refer the worker to the proper private agency for treatment. Further, the company doctor may make it possible for the worker to have the benefit of various diagnostic services such as X rays and laboratory tests at a relatively small cost.

Some progress has also been made with preventive medicine. In a number of instances, attempts have been made to fight the common cold through ultraviolet ray treatments or through cold vaccines; a careful watch is, of course, kept for cases of tonsillitis and chest diseases. Where large numbers of women are employed (women are apparently more susceptible to disease than men), the company may undertake health education work, perhaps by the organization of classes in health education. "A course offered to the 190,000 women employees of a public utility company includes study of digestion, elimination, food, posture, breathing, the blood system, treatment of the common cold, the nervous system, the menstrual function, care of the sick, accident prevention, and a presentation of the benefits of periodic health examinations. The purpose of the course is the development of health consciousness, an appreciation of good health, and knowledge of methods whereby it may be achieved and maintained."¹⁷

Mention should also be made of the visiting nurse service supported by some companies. These nurses visit the homes of sick employees to make suggestions as to the treatment of the sick and to perform the various nursing services which the employee could not otherwise obtain.

Company medical services are occasionally extended to the family of the employees, and health campaigns may be carried on jointly by the company and the community health authorities. Obviously, health conditions in the community are of great importance to the company, especially if there is any threat of epidemics; sanitary conditions in the environment, the quality of the water supply, and the like, are matters in which the personnel department often interests itself.

Besides medical work, some companies also have a dental clinic in which emergency cases are treated, cavities filled, or teeth extracted. For more elaborate work employees are referred to a competent private practitioner. In a few special cases optical clinics are provided by the management.

¹⁷ National Industrial Conference Board, *Medical Supervision and Service in Industry*. New York. 1931. P. 53.

Though by no means all employers provide medical service, a significant and growing proportion does; here, as in so many other phases of personnel work, small companies are least prominent. Summarizing the results of an investigation, the National Industrial Conference Board says: "Medical service of some kind is provided for employees by 1,598 companies or 65.2% of the total number covered. These companies employed 93.1% of the total employees, indicating that medical work is least prevalent in the small companies. The most frequently reported form of medical work, and also the most elementary, is organized first-aid work. However, 1,154 companies have a company dispensary or hospital, 867 have a plant nurse, and 722 have either a full-time or part-time physician or both. Nearly half of the companies give physical examinations to new employees and 471 provide periodic examinations to enable employees to discover and arrest incipient physical troubles."¹⁸

Medical services provided for employees are said to pay for themselves many times over. Employers point out that comprehensive medical services are likely to result in greater efficiency, in lessened labor turnover, and in reduction of lost time due to absence, as well as to fewer and less severe accidents.¹⁹

Sanitary facilities. Certain sanitary facilities are required in mills and factories by the laws of nearly all the states; legislative standards are, however, quite low and many companies have made substantial improvements over them. Workers attach much importance to such things as adequate and satisfactory showers and toilets. Other bad working conditions, such as abnormally high temperatures, lack of ventilation, and the accumulation of great heaps of rubbish, matter scarcely at all alongside of the fact that the men had no place to wash up when they finished work. From the standpoint of health, an adequate number of properly maintained clothes' lockers, showers, drinking fountains, and toilets, as well as separate rest rooms for the two sexes, is obviously important. But these facilities are equally important for their effect on employee morale. When workers have to walk considerable distances to a drinking fountain or when they have to go home at night in their working clothes covered with oil and dirt, they are not likely to cherish any great goodwill toward the management.

Vacations with pay. A practice, once restricted exclusively to executive and white-collar workers but now widespread throughout industry, is that of giving employees an annual vacation for a week or two with pay. Whether the company wishes to reward the employee for faithful service throughout

¹⁸ *What Employers Are Doing for Employees*, op. cit., pp. 17-18.

¹⁹ Watkins, op. cit., p. 479.

the year, or wishes to provide him with a change of scenery, or is merely following the fashion set by other employers, the fact remains that a vacation is usually desirable from the standpoint of the worker's health, for it tends to offset the accumulated fatigue and gives his body a chance to recuperate from the undoubted strain attached to modern production methods.²⁰

Educational activities. We have previously described the efforts of some employers to prepare their workers for industry by a more or less elaborate system of instruction. Not all the educational activities embraced in personnel programs are of this character. Rather, a substantial number of employers, at least the larger ones, have instituted various methods of advancing their employees' cultural interests. In some companies there is a full-time educational director whose function it is to co-ordinate the educational work. Some companies have established continuation schools for their younger employees. Others have started Americanization classes designed especially for workers of foreign birth; critics have suggested that these Americanization classes are intended largely as antiunion devices. In a large number of cases, this educational work is carried on in co-operation with outside institutions. Circulating libraries are fairly common in the larger companies, and some companies provide reading rooms for their employees. As we have previously noted, a number of employers stimulate their workers to self-improvement by paying all or part of their tuition for courses taken at a college or university even though the courses are not directly related to the work in the plant.

Recreational activities. There has been much discussion recently of the place of recreational and athletic activities in a personnel program. It is rather generally agreed that worker participation in athletics is desirable not merely from the worker's point of view but also from that of the company on the ground that "all work and no play makes Jack a dull boy." Practice tends to vary, however, from company to company. Some have their workers participate vicariously by hiring a semiprofessional baseball or basketball team which "represents" the company in contests with teams of rival concerns. Other companies prefer what might be called intramural athletics. The expense attached to hiring athletes has caused a drift in the direction of intramural activities, with the company supplying the facilities and the employees the energy, though occasionally the facilities are provided by the employees' association. In a few instances the facilities for recreation are very elaborate; the plan of the American Rolling Mill Company provides

²⁰ See National Industrial Conference Board, *Vacations with Pay for Wage Earners* New York. 1935.

parks, golf courses, and athletic fields. R. H. Macy & Co. provides a summer camp where its women employees can spend their vacations for a nominal sum, and where skilled leaders conduct recreational activities.

Social activities. Besides the activities already described some companies have participated extensively in the social lives of their workers in various ways. Some have provided clubhouses which, particularly in a small community, serve as the chief centers for parties, dances, and club meetings and fill a real need in the employees' lives. Under the sponsorship of a skillful social director, employees participate in hikes, picnics, outings, June walks, dances, parties, and the other social functions characteristic of life in a small community.

Employee magazines. To overcome the impersonality accompanying enormous growth in the size of the business unit and to provide a medium for worker expression as well as for the effective transmission of information by the company, numerous employee publications have been established. While these are commonly under the direction of the educational director or the advertising manager, a wide degree of employee participation is sought and the success of the plant publication is often measured by the degree of worker interest in it. Workers are encouraged to submit stories and personal items, the publication of which is felt to tie the worker closer to the company. The columns of the paper are often used to publicize noteworthy performances of individuals such as prolonged service, attendance records, safety records, and the like. In addition there are numerous educational items in the paper: lessons in safety and health work, discussion of technical phases of the business, and so on. If there are mutual benefit associations or company unions or employee associations of some other character, their activities will provide many lively topics for the magazine.

Company cafeterias. For a variety of reasons, companies have provided restaurant and cafeteria facilities for employees. Sometimes there has been no other place for the men to eat; again, the company may not wish the workers to leave the premises for lunch. Or the company may have learned that going out to lunch in bad weather causes absences because of illness.²¹ Other reasons include the belief that a hot meal is to be preferred to a hasty lunch of the wrong kind of food which may make the workers sluggish in the afternoon. Besides, if the plant is situated in a densely populated area, getting lunch in a commercial restaurant and returning to work on time is often a physical impossibility.

The lunch provisions made by companies vary all the way from a sim-

²¹ National Industrial Conference Board, *Industrial Lunch Rooms*. New York. 1928. P. 1.

ple room equipped merely with heating fixtures over which workers can warm their coffee, to elaborate restaurants and cafeterias offering a wide and different choice of foods each day. Very few companies operate their cafeterias for profit, some charge less than the usual price, and a few even provide free lunches.

Housing the worker. Company activity in housing the worker is an old story; we have long been familiar with company houses and company towns. Originally these projects were undertaken to provide facilities for workers coming to a new industrial location; but of recent years the dominant motive appears to have been the desire to make workers more contented either by making it possible for them to own their own homes through loans on easy terms or else by building the houses and renting them to the workers. Home ownership is commonly preferred on the ground that it tends to make the worker a responsible element in the community and interested in its progress. It also weakens his desire to leave the company's employ. On the other hand, the disastrous experiences of home owners in recent years have made employers more cautious about saddling the worker with a heavy mortgage which he will be unable to carry if he becomes unemployed.

It is difficult to describe company homes in terms other than that some are excellent, some fair, and some miserable. Much of the same is true of company towns, i.e., towns in which all the land is owned by the company so that it is completely private property including the streets, with the workers renting their homes from the company. As one writer says: "At their worst, company villages are dismal in the extreme. They are merely rows of drab wooden shacks, too flimsy to be warm, too dirty to be hygienic, and too uniform to be interesting. And worse perhaps than these physical deficiencies is the feeling of their inhabitants that they live in a town owned, operated, and controlled in all its details by those from whom they draw their pay. In such towns, the companies own the houses and rent them to their workers. They may even compel workers to live in them and to buy at the company store at prices set by the company. It is because of such cases that many workers think of living in company villages as akin to serfdom."²² Company towns like Kohler, Wisconsin, are remarkably different—they seem to have been constructed for comfortable living and in some instances are models of town planning and land utilization. But even in such towns the company has so much control that there is scarcely a phase of the worker's life which is beyond its reach.

Miscellaneous activities. Personnel departments often perform many functions in addition to those here described. They may offer facilities for

²² C. Canby Balderston, *Executive Guidance of Industrial Relations*. University of Pennsylvania. Philadelphia. 1935. P. 132.

legal aid and advice, serve as guide and counselor to the worker in his difficulties, give him financial aid and advice, supervise co-operative purchasing of consumers' goods, and manage a company store if there is one. There are, besides, the very important activities directed to alleviating insecurity which are discussed in a later chapter. A survey of existing personnel practice seems to reveal virtually no aspect of a worker's life which is not touched by a personnel department in at least one company.

That many of the welfare activities are desirable from the worker's point of view there can be no doubt. Though the management may consider the worker's health and safety in terms of dollars and cents, any reduction which management can effect in the accident and disease rate is valuable. And there can be no question of the importance of cultural and recreational facilities, especially in communities in which such facilities are not otherwise available. Yet the very scope of welfare and social activities carries a note of warning; when the employer participates in so many phases of the worker's life, there is the constant danger of excessive action and the establishment of a paternalistic system.²³

Critics who are aware of the danger of extreme paternalism point to the fact that many of these welfare activities were developed in order to win workers away from independent unions and argue that if employers really want to do something for their workers they ought to raise wages and abandon most of the service activities. In a democratic society, they say, there is no room for the almost feudal relation which exists between the worker and the company with an elaborate, even though a well-intentioned, personnel program.

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²³ For a biting description of personnel work by a radical critic, see Robert W. Dunn, *The Americanization of Labor*. International Publishers. New York. 1927. Pp. 193-94.

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QUESTIONS

1. Why has American industry found it profitable to adopt personnel programs?
2. Outline a program of personnel work suitable for a steel mill in a small mid-Western town. Justify the various activities in the light of the workers, their location, and so on.
3. How would the program outlined in answer to the preceding question differ from a program for textile workers in a Southern mill village?
4. Would activities in a large city differ from those in a company town? Why? In what respects?
5. Outline the major divisions of a comprehensive personnel program.
6. Explain the nature and uses of job analysis.
7. Why does personnel administration stress recruiting of workers? Evaluate the various sources of labor supply.
8. Discuss and criticize the various types of tests used in industry.
9. Describe and criticize methods of training workers.
10. Discuss the measures adopted by employers to protect the health and safety of their employees.

23 . . . FINANCIAL INCENTIVES AND PROFIT SHARING

THE pursuit of efficiency associated with scientific management may have been largely attributable to the engineer's inherent dislike of wasted motion, materials, and time. To the businessman, however, the chief appeal of efficiency lay in the possibility of reducing production costs. If the reorganization of the plant and the adoption of new machines and new production techniques were to justify themselves, they had to effect a saving in cost. That much attention should be devoted to labor was only to be expected in the light of the fact that the wage bill looms so large in the cost of production. Unit labor costs can be reduced either through a wage reduction or an increase in output. Scientific managers almost invariably refrained from the former; it was not, in the first place, a novel idea; second, the opposition of labor would be roused or strengthened; third, they hoped for much better results from the alternative—increase in output.

To maximize production the co-operation of labor was essential. The men had to learn and apply the new techniques conscientiously, which they were not likely to do so long as they could see only threatened harm to themselves. To win the workers' goodwill and arouse their interest, various new wage payment plans were introduced, commonly known as incentive wages. These plans were calculated to appeal to the worker's self-interest; they sought to make it financially worth his while to apply himself diligently to the work in hand, success or failure being immediately reflected in the size of the weekly pay check. And to the employer, these plans fur-

nished an excellent opportunity to reduce labor costs drastically. Before discussing incentive wages, let us examine the older, and still common, methods of wage payment.

TIME WAGES

Perhaps the simplest basis for the payment of wages is the amount of time spent on the job, whether by the hour, day, or week. There are many occupations in which any other basis of payment would be impracticable, if not impossible—night watchman, theater usher, elevator operator. There are other cases in which the tasks to be performed are so unstandardized that payment for time is the most feasible. In still other instances, time wages are used because it is not necessary to stimulate the employee to do his best by basing payment on productivity, e.g., teaching. Again, where the worker has no control over his volume of production, time wages may be used. Thus in an automobile assembly factory where the pace of production is set by the machine, time wages may prove a satisfactory method of payment from the employer's point of view.

It should be understood, of course, that since the employer's concern is with production rather than with time put in, some idea of how much should be produced is implicit in the notion of time wages. The employer's advantage thus lies in getting as much work done in as little time as possible; in this fact lies the explanation for the widespread discontent of employers with time payment where the conditions described above are absent. That many workers restrict output is commonly known; therefore the employer who wants to increase the output in a given quantity of time is placed under the necessity of hiring foremen and supervisors. Even these are often unable to produce the desired result, for shirking on the job is often difficult to detect. This suggests the basic weakness of time payment: the absence of sufficiently close correlation between wages (for time put in) and production.

PIECE WAGES

The oldest remedy advanced for the shortcomings of time payment is payment by the piece—50 cents for every automobile washed, \$4.00 for every room painted, and so on. Obviously, this method places it entirely up to the worker to produce as much as he can, assuming of course that his output is not so small that the employer might find it more profitable to replace him with another in order to get the work done. Above this minimum, however, the worker may increase or decrease his pay by increasing or decreasing his production.

It is clear that this method can be used only where the amount produced by each man is definitely ascertainable. The dependence of one man on the production of others should be reduced to a minimum, for where delays on the part of some operators in a continuous process prevent others from working, there is likely to be considerable friction. Where quality is an important element in production, piecework may result in the production of inferior goods.

The theoretical advantages of piece wages as an incentive to workers have been largely destroyed by the use of piece wages in practice. Again and again employers who have changed from time to piece payment have discovered that workers earn only slightly, if any, more than under time payment. And this is caused rather by the indifference of the workers than by their inability to produce more, for workers have learned through bitter experience that their earnings must not mount sharply when they work on a piece basis. There have been cases where workers on a piece basis increased their production by 200 per cent or more, only to discover that the high weekly earnings stimulate the employer to cut the rates. One cut in rates follows another until the workers earn no more for the new production than they did for the old. It does not take many experiences of this sort to make workers feel that it is dangerous to produce too much, even on a piece basis.

INCENTIVE WAGES

To the leaders of the efficiency movement, straight time wages were out of the question. Straight piece wages, as then used, were equally out of the question in view of their unsatisfactory effect on the men. The solutions adopted took the form of modifications of the older payment of wages, chiefly of piece wages. It was hoped that workers' objections would be overcome by guaranteeing a rate against cutting except where there was a change in the conditions of production. At the same time, to avoid too high earnings, the rates were fixed by careful time and motion studies (the assumption made by Taylor and others was that high piece earnings were the result of defective rate setting). Two objectives were thus intended to be simultaneously realized: (1) production was to be greatly increased; (2) labor costs were not to be proportionately affected.

Taylor and the differential rate. In the 1880's Taylor developed the differential rate which, though seldom used in its original form today, served as a point of departure for several important later plans. The essential idea behind Taylor's incentive plan was to provide two wage rates for the same work, with the higher rate going to the man who came up to the standard set. After careful time studies a standard of performance was fixed which

the average worker was expected to be able to reach without undue fatigue. Workers who exceeded this standard were paid at one rate; those who fell below were paid at a lower rate. Not only, therefore, did the inferior worker receive less because of smaller production but he also suffered because of the lower rate at which he was paid. For example, suppose the standard output for a day is 80 units and one worker produces 100 while the other produces 60. If the first worker is paid at the rate of 6 cents a piece and the second at 4 cents, their earnings are \$6.00 and \$2.40 respectively. Hence while there was only a difference of 67 per cent in their productivity, there was a difference of 150 per cent in their wages. He deliberately fixed the lower rate at a point which would not achieve a satisfactory wage to a man falling short of the standard, expecting that if the man did not improve his output he would leave voluntarily.

Merrick multiple piece rate. The plan developed by D. V. Merrick is essentially an adaptation of Taylor's differential rate system, with the important difference that while Taylor called for two piece rates, Merrick provided for three. After the performance time was fixed, workers who fell below 83 per cent of the task were paid the straight piece rate. Those who exceeded 83 per cent but fell short of the task were paid a bonus of 10 per cent; those whose production exceeded the task received a bonus of 20 per cent.

Gantt's task and bonus plan. Henry L. Gantt was closely associated with Taylor, and his wage plan borrowed largely from the idea of the differential rate, with the important difference that Gantt did not penalize substandard performance. Having fixed a standard which could be regularly attained, Gantt provided a bonus for attainment. If the standard was exceeded, the worker was paid for the time worked; if the standard was not reached, the worker still received his guaranteed daily wage. The bonus varied from 20 to 50 per cent and was a considerable inducement to increased production.

The Gantt plan had many advantages over the differential rate. Because it guaranteed a daily wage, workers who were slow in coming up to the standard were not discouraged. Besides, the Gantt plan is more realistic in that it does not require the unusually capable employees whom Taylor demanded for his work.

Halsey premium plan. This plan, which was developed by Frederick A. Halsey about 1890, is sometimes described as "a constant sharing plan with a time wage guarantee." After the standard of performance is set, the worker is paid the regular daily wage if he does not come up to standard. If, how-

ever, he produces more than the standard, he is paid the regular rate together with a percentage, varying from one-third to one-half, of the value of the time saved. For example, suppose a worker produces in three hours a quantity of work for which the standard is four hours. If the hourly rate is sixty cents, the worker would receive \$1.80 (for the three hours worked) and 30 cents (50 per cent of the value of the time saved) or \$2.10. One of the chief advantages of this plan is that the times set for work are based on past performances rather than on careful time and motion studies, thus eliminating the costly calculations necessary in, for example, Taylor's system.

Rowan variable sharing plan. The incentive plan devised by James Rowan in 1898 is substantially similar to the Halsey system. It establishes a basic task time for each operation and fixes a definite hourly wage for it. This wage the worker receives regardless of the amount of his production. If, however, he finishes his work in less than the task time, he receives in addition to his base wage a premium calculated by the ratio of the time saved to the time allotted for the task. Thus, suppose four hours are allotted for a given piece of work and the work is actually completed in three hours. The worker whose basic wage is \$1.00 per hour would then receive \$3.75 for the time worked, i.e., he has saved 25 per cent of his allotted time so that he receives \$3.00 for the three hours actually worked plus 25 per cent of that amount, or 75 cents. It will be noted that under the Rowan plan it is impossible for a worker ever to receive as much as twice his basic wage. For, suppose a worker increases his productivity by 1,000 per cent and finishes in one hour work for which the task time is ten hours. He would receive \$1.00 (the basic hourly wage) plus 90 cents (ratio of time saved to time allotted) or \$1.90. This rather striking protection of the employer's interests was justified on the ground that the unstandardized conditions to which the plan is applied make difficult the scientific determination of the time which should be allotted to a given task.

Bedeaux point premium plan. The main features of this plan have been summarized as follows:

The Bedeaux point premium plan is similar to the Halsey plan in the wage payment method, but workers get 75% of the savings instead of 50%, a high standard task is used, supervisors and other direct labor sharing in the bonus, and production is carefully controlled. Below standard task the time wage is guaranteed. Savings above task are shared by direct labor, indirect labor, and supervisors responsible for the work. The basic unit is a point called the "B," which is the amount of work and fatigue for the particular job to be performed per minute. Sixty "B's" per hour are required to reach standard performance.¹

¹ National Industrial Conference Board, *Financial Incentives*. New York. 1935. P. 13.

The 100 per cent premium plan. This plan differs from the other incentives based on time saved in that the worker who exceeds standard performance is paid at the full hourly rate for the time saved. Here, too, there is a guaranteed weekly wage regardless of production, but obviously those who fall below the standard performance do not benefit from the provisions for premiums. Suppose the standard performance calls for ten units a week; the worker who produces twenty units will receive twice the standard pay for the job. This rather liberal allowance is overcome in large part by the fact that where the plan is used the work is timed quite strictly and it is unusual for production to exceed the standard set.

Emerson efficiency system. Harrington Emerson's incentive wage plan² included features common to most of the other plans: a set time was fixed for each operation; an hourly rate was fixed for each man; a schedule of bonuses was established which showed the bonuses to be paid for varying rates of efficiency. In addition to the regular hourly rate, the worker would receive a percentage of this rate, depending on the degree of efficiency obtained. Unlike most plans, Emerson's started the bonus when the worker attained 66⅔ per cent of the task, the percentage of the bonus increasing with increasing production. For example, at 87.5 per cent efficiency, the bonus amounted to 7.94 per cent of the wage rate, while at 100 per cent efficiency, the bonus amounted to 20 per cent of the rate. If the worker exceeded 100 per cent efficiency, he would receive the standard rate of pay for all the time he *saved* together with the 20 per cent bonus for the time he worked.³

Group plans. The various plans we have just described are based on individual performance. There are many situations, however, in which it is difficult so to divide the task that the performance of each worker can be accurately measured. To handle this problem, various group plans have been developed. Daily wage rates are usually guaranteed under these plans and a bonus is paid for work above standard, the bonus being divided among the group on the basis of either the proportion of hours worked or the base wages of the members of the group.

Other plans. Space does not permit the discussion of any additional plans nor would such discussion be particularly profitable, since the plans are so much alike. There are literally dozens of such plans differing from each other in very trifling details.⁴

² Watkins, *op. cit.*, p. 379.

³ Harrington Emerson, *Efficiency as a Basis for Operation and Wages*. The Engineering Magazine. New York. 1909.

⁴ See, for example, Charles W. Lytle, *Wage Incentive Methods*. The Ronald Press Company. New York. 1929.

Incentive wages in practice. A recent survey by the National Industrial Conference Board of the personnel practices of 2,452 companies reveals interesting data on the use of incentive wages in American industry. Of the 2,075 manufacturing enterprises, 632, or 30.5 per cent, used a premium or bonus plan, with the percentage ranging from 48.5 per cent in iron and steel to 9.3 per cent in leather. Of the 377 nonmanufacturing enterprises, on the other hand, only 13.5 per cent used premium or bonus plans, among which mercantile enterprises were by far the most conspicuous. It is also interesting to note that 52.8 per cent of the manufacturing companies used a piece-rate plan, but only 12.7 per cent of the nonmanufacturing companies used it.⁵ This bears out what we said above regarding the practicability of time and piece wages.

In view of the widespread use of incentive wages it would be desirable to know whether workers are better or worse off after the introduction of an incentive wage system. Unfortunately, reliable data on this subject are not to be found. Indeed, even if it were discovered that all workers had their wages increased under incentive wages, our query would still be largely unanswered, for one of the central issues is the basis upon which the increased production is divided between employer and worker. Under the method of time payment, increases in productivity obviously went altogether to the employer; under straight piece payment, they just as obviously went altogether to the worker. Incentive wage plans represent a compromise between the two positions, but the justice of the compromise is by no means universally accepted.

Caution should be exercised in handling data dealing with incentive wages. A plan which on its face may appear very advantageous to the worker may in fact be very disadvantageous, and vice versa. Generous bonus provisions for work in excess of standard are of no avail if it is virtually impossible for the worker to attain the standard. Conversely, bonus payments which are stepped up at a slow rate may prove much more beneficial to the worker if the task is within his competence and he can earn the bonus without undue fatigue.

Incentive wages: an appraisal. Regardless of the qualities or imperfections of particular plans as incentives, they all suffer from one basic defect—a failure to give objective consideration to the validity of the basis from which they started. In every instance, it was taken for granted that a worker who attained the standard of satisfactory performance would receive a fair wage and he who exceeded the standard would receive additional compensation. But practically never was any thought given to ascertaining just what

⁵ National Industrial Conference Board, *What Employers Are Doing for Employees*. New York. 1936. Pp. 36-37.

a fair wage was. Taylor, who scrapped industrial precedents ruthlessly and insisted on the application to industry of "fundamental" principles scientifically derived, utterly neglected to note that in his fixing of the basic wage he was following those very rules of thumb which in other respects he so severely criticized; in this he was accompanied by practically all others who set out to develop incentive wage plans. They all started with some preconceived notion as to what a man *should* earn for work of a given type; they were seldom concerned with the question why? Why, for example, should an unskilled laborer receive \$3.00 per day for satisfactory work rather than \$3.50 or \$2.50? By what *scientific* procedures can fairness in wages be defined? Is it not true that different people—for example, employer and worker—will disagree sharply as to what a fair wage is? And if fairness is a matter of individual belief, or even if it represents a consensus of opinion in the community, can it be defended as beyond criticism because it is "scientific"? The fact of the matter would appear to be that the authors of incentive wage systems adapted to their purposes the wage scales which they regarded as desirable with all the differentials for skill and experience; in so doing, they took over *in toto* all of the prejudices and rules of thumb which had been developing in the wage system for generations. It is difficult to measure the contribution which any individual worker makes to the value of the product, or to say, for example, that the compositor is worth more to the proprietor of a printing establishment than the pressman. Yet most people, and with them the scientific managers, would unhesitatingly fix the compositor's wage above that of the pressman, expressing in this manner what has been the relation between the two wages in the past and what is still regarded as a proper differential. It may be said that the compositor is more skilled! But how can we accurately measure differences in skill? And in any case, higher payment for skill represents a market phenomenon rather than a reward for long years of training. And if this is so, may it not be that the differential has no other justification, that the compositor and the pressman are equally valuable to the enterprise but that the former receives a larger wage because of a more favorable situation with reference to the labor market?

We do not intend to argue that there may not be a good reason for the present structure of the wage system. But it would seem to be clear beyond doubt that the concepts of fairness and unfairness in wages, as in other matters, merely reflect contemporary mores rather than objectively determinable facts, for even if we think of fair wages in terms of standards of living we would still have to justify our choice of one standard as opposed to others.

Our criticism of incentive wages as being basically unscientific and subjective in character receives added importance from the attitude of most

scientific managers toward trade-unionism. Practically none of the early leaders of scientific management could see any justification for the existence of unionism, and a good deal of this hostility appears to have survived. The argument ran like this: The principles which are being applied to industry (and labor) are scientific, carefully tested principles whose validity cannot be questioned. For a union to interfere would be an attempt to upset a law of nature, so that under the best of circumstances a union would merely be in the way. What Taylor and most of his contemporaries did not recognize was that their basic wage (and, we might add, the incentives attached thereto) were not scientific, and that there was considerable room for controversy over the adequacy of the scale in which the union could represent the interests of labor.

OTHER FINANCIAL INCENTIVES

Incentive wage plans are by no means the only, or even the earliest, methods used by employers to stimulate workers to greater output and lower labor costs. A variety of other incentives has been developed, the best known of which are discussed in this chapter. Between these incentives and the wage payment plans there are striking similarities, especially in objective. There are also striking differences. As we shall see, the reasons given even by employers themselves for the adoption of, for example, profit-sharing systems, are vague and inconclusive and suggest that the employer is often not quite clear in his own mind as to the precise objective he is pursuing. In wage payment plans, on the contrary, there is much more clarity of purpose and much more rational calculation. Another difference between the two groups of financial incentives is still more conspicuous. Practically all of the wage payment plans were developed by engineers whose training and experience may have caused them to search for an incentive whose results could be measured exactly. Precision and measurability are leading characteristics of the wage plans; response to the incentive is easily and accurately evaluated. Not so, however, with the other incentives. It is difficult, if not impossible, to measure precisely the result of, say, an employees' stock ownership plan. About all that can be expected is a general consensus that a particular plan has succeeded or failed; even this judgment, unfortunately, is often lacking, for it is not uncommon to find two people who study the operation of a single incentive plan disagreeing sharply as to its effectiveness. But, though the results of such financial incentives cannot be measured definitely, the plans nevertheless deserve careful study, for they represent the efforts of all sorts of employers to "do something" about the labor problem.

Profit sharing. Probably the best-known financial incentive plan is profit sharing. The term "profit sharing" has been used to describe a wide variety of arrangements from tilling the soil or engaging in a fishing expedition on a share basis to the distribution of special bonuses to employees at Christmas time. Most writers agree, however, that the designation should be limited to those cases in which, in accordance with some preconceived plan, payments in addition to wages are made to workers, the payments being based upon the earnings of the business.⁶

Development of profit sharing. The exact date of origin of profit sharing is unknown, though its use extends back for a century at least. It is said that Albert Gallatin had a profit-sharing plan in his glass works before the end of the eighteenth century and that Horace Greeley used a limited profit-sharing scheme on the New York *Tribune*. Not until long after the Civil War, however, did profit sharing attract much attention in the United States; even then the rate of growth in this country seemed to lag considerably behind that in Great Britain and France, and it is unlikely that there were ever many more than 200 profit-sharing plans adopted in the United States. The following data for 185 plans illustrate the development of the movement in the United States:⁷

DATE	NUMBER OF AMERICAN PLANS INITIATED
Prior to 1881.....	6
1881-1890.....	23
1891-1900.....	7
1901-1910.....	17
1911-1920.....	75
1921-1930.....	24
1931-1936.....	33
TOTAL.....	185

Generally speaking, the introduction of profit-sharing plans tends to vary directly with prosperity and industrial unrest. During periods of active business and substantial profits, employers are much more likely to experiment with devices of this kind; obviously, too, when business is bad there are no profits to be shared. Similarly, active industrial unrest characteristic of periods of prosperity may lead the employer to institute profit sharing.

⁶ The report of the Senate Subcommittee on Finance on profit sharing discards this definition and includes within the scope of profit sharing virtually all financial incentives. See *Survey of Experiences in Profit Sharing and Possibilities of Incentive Taxation*, 76th Cong. 1st Sess. Senate Report No. 610. Government Printing Office, Washington, D. C., 1939. Chap. VI.

⁷ C. Canby Balderston, *Profit Sharing for Wage Earners*. Industrial Relations Counselors, Inc. New York. 1937. P. 9.

Purposes of profit sharing. The literature on profit sharing reveals many arguments which have been advanced in its behalf. Most of these fall into two classes: (1) those holding that employers ought to share profits with workers as a matter of justice; and (2) those favoring profit sharing because of the benefits expected to accrue to the enterprise. As to the first, it is said that workers invest their lives in the industry just as the owners invest their capital; that workers and owners deserve a fair reward in the form of wages and dividends respectively, and that earnings in excess of this fair reward ought to be divided between labor and capital. Regardless of the theoretical soundness of this position, it can scarcely be regarded as of great significance in an inquiry as to why employers voluntarily institute profit-sharing plans.

Coming, then, to the second group of objectives, we find it urged that profit sharing will prove advantageous to the enterprise by: (1) reducing labor turnover; (2) making the worker more efficient; (3) inducing him to be more economical in his use of materials, machinery, and equipment; (4) increasing his output. These results are expected to follow from the appeal to the worker's self-interest. Thus one of the early writers on the subject says: "Now if the master can bring into play upon the mind of his hired man more of the same motive of self-interest which is so effective with himself, he may look to see somewhat of the same result."⁸ Nor is the effect supposed to be limited to the worker himself; rather it is hoped that one worker would spur others to greater activity, lest he lose by their dilatory tactics.⁹

The company is also expected to benefit from the greater loyalty which profit sharing is supposed to arouse in the individual worker, especially during periods of stress. Occasionally, profit sharing has been adopted in an attempt to ward off organizing activities of independent trade-unions; and, as we said above, it has sometimes been introduced in an effort to end industrial unrest and to bring about peaceful relations between worker and employer. Some plans owe their origin to the employer's desire to create public goodwill by the publicity attaching to the plan.

In a number of instances, profit sharing has been deliberately used by employers as a screen to conceal a low wage scale. Some employers have used it as a means of attaining flexible wage scales, the profits going to the workers being regarded as equivalent to wage increases which might have been given in the absence of profit sharing. Of greater social value are those profit-sharing systems which aim at stabilizing earnings; these systems adapt to the payment of labor the method long used in the stabilization of dividends; i.e., just as many enterprises set aside a portion of their earnings in

⁸ N. P. Gilman, *Profit Sharing Between Employer and Employee*. Macmillan & Company. London. 1890. P. 418.

⁹ Gorton, James, and Others, *Profit Sharing and Stock Ownership for Employees*. Harper & Brothers. New York. 1926. P. 51.

good years to permit the continuation of dividend payments out of surplus in bad years, so some companies have suggested the advisability of putting the workers' share of the profits in a separate fund which would allow workers' incomes to continue relatively undiminished during periods of slack production.

Employers sometimes share profits out of a spirit of benevolence; that is, a desire to share their good fortune with others. In rare instances, they have used profit sharing as an intermediate stage preparatory to turning the business over to the employees, the workers being expected to become educated in the business and its problems by their participation in the profit-sharing plan. Other companies have tried to relieve the problem of the older worker in industry by applying the worker's share of the profits to the purchase of annuities. Mention should also be made of the belief, especially current in the late 1920's, that enhanced purchasing power of labor made possible the increased purchase of consumers' goods and consequently stimulated business activity.

Types of profit sharing. Plans which make practically all the permanent employees eligible for participation in the profits are known as *unlimited* plans; those which apply to only a portion of the working force are known as *limited* plans. The eligibles may include all those earning below a stated amount, or those working in only certain divisions of the plant, or those who have been with the company for a long period, or those who participate in some other program, for example, stock ownership or employees' savings pools. The term "managerial profit sharing" is used to denote those plans which apply only to executives.

*Analysis of the plans.*¹⁰ We may analyze the plans under the following headings: (1) eligibility; (2) determination of the amount available for distribution; (3) the basis of apportionment; (4) the form and frequency of payment; and (5) the administrative agent.

ELIGIBILITY. Where eligibility provisions are included, they generally fix a minimum period of service with the company; they may also have maximum earnings limitations, or limitations based on type of work done. The plan of the Western Union Telegraph Company, discontinued in 1930, covered all regular employees with nineteen months' service at the time of allotment. The plan of the Union Trust Company of Chicago made eligible all employees with four months' service at the time of allotment and who had contributed to the savings fund, including employees on pension. The

¹⁰ The analysis is that used by Balderston, *op. cit.*, pp. 86-131. Except as otherwise indicated, the illustrative material in this section is taken from the same source.

Visking Corporation's plan, initiated in 1934, applied to all employees, except the president, who had one year's continuous employment at the time of allotment, earned less than \$6,000 a year, and had not behaved in a manner injurious to the interests of other employees. The Nunn-Bush Shoe Company excluded directors, traveling salesmen, and employees earning \$4,000 a year or more. The R. J. Reynolds Company plan covers employees who have been in its employ for the preceding twelve months and who own the company's common stock. Still other companies, for example the Inland Steel Company under its discontinued plan, require a saving of a certain percentage of the salary as a condition of eligibility.

DETERMINATION OF AMOUNT AVAILABLE FOR DISTRIBUTION. In a study of seventy-six companies, the National Industrial Conference Board found the following practices: (1) a percentage of net profits, the amount not stated; (2) from 25 per cent to 50 per cent of the net profits; (3) ratio of capital and surplus to pay roll; (4) all profits after 10 per cent is paid to capital; (5) all profits after 8 per cent is paid to capital; (6) ratio of dividend payments to payroll; (7) some percentage of dividend payments; (8) from 10 per cent to 25 per cent of net profits; (9) 5 per cent of net profits paid to savings fund; (10) less than 10 per cent of net profits; (11) all profits after 5 per cent is paid to capital; (12) 5 per cent of the amount available for dividends on the common stock.¹¹ In the plan of A. J. Nystrom & Company, the amount available for division was arrived at by deducting from net profits 8 per cent on the net capital invested at the beginning of the year and 5 per cent as the interest thereon.¹² In the Hammermill Paper Company plan, each employee received a percentage of the gross profits before dividends, depreciation, and taxes. An interesting variation is contained in the plan of Fairbanks, Morse and Company, initiated in 1937, under which, after a deduction of 7 per cent for dividends on stock outstanding, the workers receive 15 per cent of the first \$500,000 remaining, 20 per cent of the next \$500,000, and 25 per cent of any excess over \$1,000,000.

BASIS OF APPORTIONMENT. By far the most common basis of distribution among the workers is that based on the proportion of each worker's earnings to the total. There are, however, many plans which use different bases. Under the plan used by the Oneida Community, Ltd., one-fourth of the amount available was distributed to all employees in proportion to their total base wages during the year. The remainder was distributed on the basis of their length of service, the scale used ranging from 1 per cent after

¹¹ National Industrial Conference Board, *Profit Sharing*. New York. 1934. P. 9.

¹² Metropolitan Life Insurance Company, Policyholders Service Bureau, *Sharing Profits with Employees*. New York. N.d. P. 9.

three months' continuous service and 5 per cent after one year's service to 10 per cent after five years' service and 12 per cent after twenty years' service.¹³ The Sears, Roebuck and Co. plan credited depositors' accounts (the saving of 5 per cent of salary to a maximum of \$250 a year was a condition of eligibility) in proportion to the deposits and the employee's length of service. The depositors are divided into three groups: those with less than five years of service have their share prorated according to the deposits of the preceding year; those with service of five to ten years are prorated according to twice the deposits of the preceding year, and those with service of ten years or more according to three times the deposits of the preceding year. In the Nystrom plan, mentioned above, three-fourths of the fund were distributed on the basis of each employee's earnings; the remaining 25 per cent was divided on the basis of the length of service.

FORM AND FREQUENCY OF PAYMENT. There has been a good deal of controversy among students of profit sharing as to the form of payment. From the standpoint of incentive alone, it is urged that all payments be made in cash. This method is criticized, however, on the ground that the cash received by the worker is soon dissipated, thus depriving the plans of any long-run beneficial effect. The straight cash payment is the simplest of all and would appear to be the one most commonly used. In some cases, the company may offer the workers cash or certificates bearing interest at 6 per cent which may be cashed at any time. Other companies distribute half the amount in cash and half in special nonnegotiable employee stock which may be converted into cash only upon resignation, discharge, or death. The employees may receive their share in the form of shares of company stocks credited to their accounts. Or the profits may be put into a fund for retirement allowances, withdrawals being permitted only in case of death, resignation, or retirement. In another instance, profit sharing is used in combination with employee contributions and cash dividends, the total being used to purchase the company's common stock at the market price.¹⁴ In still other cases, the share going to the employee is paid into his savings account with restrictions on withdrawal. And some companies apply the accumulated funds toward the payment of death benefits.

If profit sharing is really to stimulate the worker to greater efforts, it would appear self-evident that the payments should be made as frequently as possible. In relatively few instances, however, are payments made more often than twice a year, presumably because of the clerical work involved. But

¹³ *Ibid.*, p. 11.

¹⁴ National Industrial Conference Board, *Profit-Sharing and Other Supplementary Compensation Plans Covering Wage Earners*. Studies in Personnel Policy. No. 2. New York. 1937. Pp. 18-21.

it is quite likely that profit sharing would be far more successful than it has been if payments were made every two or three months, for then the stimulating effect would not wear off so quickly.

ADMINISTRATIVE AGENT. The careful administration of a profit-sharing plan is essential to its success. It would be desirable to have a committee of workers co-operating with a representative of management in the supervision of the plan. Ordinarily in American plans, the administration is left either to an officer of the company or to the board of directors. The Procter and Gamble plan is administered by the treasurer and three trustees appointed from the officers and employees of the company by the board of directors. The Dennison plan was administered by the president of the company, the chairman and the secretary of the general works committee, and one other representative. The Indianapolis Railways plan was placed under the supervision of the general council of the employee-representation plan. Adaptations of these devices are to be found in practically all of the plans which make specific provision for administration.

Has Profit Sharing Been Successful? The mortality rate among profit-sharing plans seems to be very high. A study made in 1937 found that only 11 per cent of the plans initiated prior to 1901 were still in existence in 1937; 23.5 per cent of the plans started from 1901 to 1910 had survived; 24 per cent of those started from 1911 to 1920, 37.5 per cent of those from 1921 to 1930, and 85 per cent of those from 1931 to 1937.¹⁵ In view of the relatively short life of the plans, it has been commonly supposed that profit sharing has substantially failed of its purpose.¹⁶

On the other hand, the National Industrial Conference Board's survey comes to a rather different conclusion. While recognizing that many of the objectives of profit sharing, such as the building of morale, have not been achieved, other objectives, e.g., the reduction of turnover and the promotion of thrift, were attained. The study goes on to say: "A review of experience with profit sharing reaching back several decades reveals that the principle of sharing profits with employees held up remarkably well. . . . It is true that the ratio of abandoned plans to those surviving is rather high but . . . other causes than dissatisfaction have affected this ratio."¹⁷

It is fairly evident that profit sharing has not operated satisfactorily in a large number of instances. Sometimes the employer has been dissatisfied with the results; sometimes the employees. Occasionally plans have been abandoned because of the decline or disappearance of profits; occasionally a plan

¹⁵ Balderston, *op. cit.*, p. 29.

¹⁶ Don D. Lescobier, *History of Labor in the United States, 1896-1932*. The Macmillan Company. New York, 1935. III, 377.

¹⁷ *Profit Sharing, op. cit.*, p. 28.

has been discontinued at the death of the executive who had introduced it. Changes in the business or mergers with other enterprises have been responsible for the lapse of other plans; sometimes other forms of compensation were substituted for profit sharing.

Many specific shortcomings have been attributed to the sharing of profits: (1) A distribution once a year is not sufficient to maintain unflagging interest of workers throughout the year. As one executive said: "The vast majority of our employees showed a keen interest in the plan two or three weeks prior to the distribution, but unfortunately one week after that time they seemed to forget all about it."¹⁸ (2) Where the sharing of profits has been maintained at a fairly steady rate over a period of years, the extra compensation comes to be regarded as a part of the wage and often loses any incentive value. (3) In cases where profits have disappeared, workers often feel that they have been "let down" by management and sometimes even question the honesty of the accounting system: "When no profits were available for distribution, the men questioned the ability of management, and even intimated that management had adjusted the books to show no profits. The men depended on profit sharing as a part of their pay and felt cheated if they did not receive it."¹⁹ (4) The amounts received by individual workers, especially in the lowest paid groups, was generally too small to have any real effect on the worker's attitude toward the enterprise. (5) Perhaps the most important objection to profit sharing lay in the claim that there was no genuine relation between the efforts of the individuals in the plant and the amount of profits to be shared. The complexity of modern industry makes it difficult to attribute profits or losses to the exertion of employees. It is quite possible for the most enthusiastic work in the factory to be offset by inefficiency in the purchasing or selling departments of the business or, for that matter, by a turn in general business conditions. Conversely, profits may be realized despite the indifference of employees if, for example, prices should suddenly mount and the company be enabled to gain from its large inventory. Moreover, even within the plant, the laggard and the industrious worker may both be treated equally under a profit-sharing plan despite the vast difference in their efforts. Added to the other difficulties is the fact that organized labor has been consistently hostile to the idea of profit sharing.²⁰ The leaders of labor have steadily maintained

¹⁸ National Industrial Conference Board, *Profit-Sharing and Other Supplementary Compensation*, *op. cit.*, p. 14.

¹⁹ *Ibid.*, p. 15.

²⁰ The persistent hostility of Samuel Gompers to profit sharing has not apparently carried over entirely to William Green, his successor as president of the A.F.L. In his testimony before a Senate subcommittee, Mr. Green said in part: "Labor is not opposed to principles involved in profit sharing, but it is opposed to the way in which it has developed and operated. So-called profit-sharing plans were mainly developed by corporations that attempted to substitute for real collective bargaining an arrangement termed 'employee representation' which for the most part was the form without the substance. . . . Labor believes all plans affecting labor must rest on collective bargaining. . . . We believe that the first

that profit sharing was but another managerial device for deluding the workers, and that if management were genuine in its expressions the only thing to do was to increase the worker's weekly wage.

The place of profit sharing. The persistent recurrence of profit-sharing plans has led to many suggestions for their improvement. An interesting statement as to the prerequisites of a sound system of profit sharing is made by Tead and Metcalf, who lay down the following conditions: (1) there should be prior joint definition of amounts of work and amounts of pay; (2) the pay should be regarded as in the nature of a drawing account; (3) there should be definite assurance of the continuance of the plan regardless of the profits in a particular year; (4) joint agreement as to the terms of the plan, joint administration of its provisions, and joint consent to changes in it are necessary; (5) the company should be in good financial condition; (6) there should be agreement as to minimum and maximum wages and salaries; (7) there should be an annual audit of the company's books by a jointly chosen auditor, and a representative of the workers should have access to the books.²¹

There is no doubt that the adoption of these requirements would go far toward removing some of the basic defects which have ruined many profit-sharing plans. It is not likely, however, that many enterprises would be willing to bind themselves in this manner; nor is it certain that the resulting strengthening of the plans would of itself make profit sharing an outstanding element of a personnel program. Probably the sounder view is that profit sharing should supplement a well-rounded program looking toward the better protection of workers against insecurity, particularly indigent old age, which may be partially overcome by the application of the worker's share of the profits to the purchase of annuities.²²

Gain sharing. Gain sharing, a variation of profit sharing, is based on the idea that the best method of arousing the worker's interest in the enterprise is

obligation of industry and industrial management is to provide for the payment of a wage, and to establish wage and working standards through collective bargaining, and that the wage established and the standards agreed upon should provide for the payment of an income to the worker that would insure him and his family a living in decency and comfort. Now, this is the first charge on industry. There should be no profit sharing until first that definite standard wage has been established and paid.

"After that is established, then if the earnings of the industry will justify an equitable distribution of the profits of industry between investors, management, and employees, let it be done, with a full understanding and in full co-operation with the representatives of the workers. The one trouble about profit sharing, as practiced by a number of corporations, is that it has created suspicion, distrust, because the workers know nothing about the basis upon which the profits were distributed. If it is to be put into effect in a practical and satisfactory way, there is great need of frankness and open dealing between the management of the corporation and the workers themselves."—*Survey of Experiences in Profit Sharing and Possibilities of Incentive Taxation*. Hearings . . . on S. Res. 215. 75th Cong. 3d Sess. Government Printing Office. Washington, D. C. 1939. Pp. 105-107.

²¹ Tead and Metcalf, *op. cit.*, pp. 341-42.

²² Balderston, *op. cit.*, p. 57.

to permit him to share in that portion of the savings over which he has some sort of control. Henry R. Towne, the chief exponent of gain sharing, criticized profit sharing on the ground that there was no direct connection between the efforts of the individual worker and the profits at the end of the year. He urged instead a careful analysis of the company's costs and a segregation of that portion which the worker could affect, e.g., machinery repairs and maintenance, and waste. This done, any reduction of the cost was to be divided between men and management, presumably on a 50-50 basis. The fact that the plan never attracted any wide following was due largely to the general feeling that the amounts which could go to the workers under the best of circumstances would be too small to have any important effect.

Bonuses. Many companies have avoided the formality of profit-sharing plans but have retained a good deal of its flavor through the institution of bonus plans. These plans are seldom announced at the beginning of the year, and the company enters into no commitment to continue them indefinitely. If profits are satisfactory, the company may distribute special payments to the workers, usually at Christmas time. While these payments ordinarily are small, often a week's wages, they occasionally have equaled the employee's salary for the entire year. Financial institutions and brokerage houses, particularly, were generous with bonuses before 1930. With the advent of the depression, however, the bonuses were sharply decreased and in most instances vanished completely.

Apart from the bonuses which are distributed to employees without regard to any particular requirement, many companies have used bonuses or special distributions as incentives to secure good attendance, high quality of work, and long periods of service. According to a recent survey, 72 out of 2,452 companies paid a bonus for attendance, the proportion being much larger for banks and insurance companies than for other types of enterprise. Of the same companies, 156 paid a bonus for quality, and 179 for service.²⁸ As in the case of the bonuses mentioned above, there was a considerable shrinkage here especially because of the decline of business. This shrinkage assumed more than average importance in the case of service bonuses, some of which were really in the nature of deferred compensation, the employee receiving at the end of the year what he considered as part of his annual compensation. In such cases, the suspension of the bonus was viewed as a wage cut of considerable size, not as the withdrawal of a compensation to which the employee had no right.

Employee stock ownership. During the hectic years of the stock market boom, much attention was directed to the rapidly growing employee stock

²⁸ *What Employers Are Doing for Employees*, op. cit., p. 36.

ownership movement. Company after company offered plans by which their employees could become part owners in the enterprise, and many publicists were talking and writing of the revolution which was about to transform the country into a nation of worker-owners. In some instances, companies which sought to promote employee savings established a stock ownership scheme by which the worker's savings would ultimately be used for the purchase of company stock.

Plans of this sort had been known for many years. Even before 1900 the Illinois Central Railroad Company had instituted such a plan, and some of the profit-sharing schemes of that era proposed that the company distribute the workers' share of the profits in the form of company stock. The movement appears to have developed rather slowly before the World War period; in the vanguard were the National Biscuit Company, the Firestone Tire and Rubber Company, United States Steel Corporation, Procter and Gamble, Dupont, International Harvester, Dennison Manufacturing Company, Commonwealth Edison, and Brooklyn Edison. The World War period witnessed a very rapid growth in the number of companies adopting such plans, with American Telephone and Telegraph, American Tobacco, Eastman Kodak, and the Texas Company prominent in the movement. After a temporary interruption during 1921-22, a great many other companies jumped on the band wagon, among them Armour, Bethlehem Steel, Radio Corporation, General Motors, Jones and Laughlin, Pullman, Western Union, and the National City Bank.²⁴ Although accurate information as to the extent of the movement is not available, one estimate of the scope of 315 plans in effect in 1927 indicated that 806,068 employees out of a total of 2,736,448 were stockholders and subscribers, the market value of these shares in the middle of the year being well in excess of one billion dollars.²⁵

The campaign to extend ownership of stocks by employees was a part of the development of personnel administration, and the reasons for the one were largely the same as for the other. Some claimed that labor turnover would be reduced, particularly under those plans which required a protracted period of service for the employee stockholder to reap the full benefits of the plan. Others argued that the employee's interest in the company would be considerably increased if he were a part owner. Still others insisted that labor relations would become much more peaceful since there would be a clearer recognition of the identity of interests between employer and employee. The promotion of employee savings was another advantage to be derived from the plans, which were also a reward for faithful service to the company, and a modern improvement on the idea of profit sharing. Among the gains to the

²⁴ Robert F. Foerster and Else H. Dietel, *Employee Stock Ownership in the United States*. Industrial Relations Section. Princeton University. Princeton, N. J. 1927. Pp. 6-8.

²⁵ National Industrial Conference Board, *Employee Stock Purchase Plans in the United States*. New York. 1928. P. 35.

employer not often publicized was the diversion of the worker's interest from trade-unions into less hostile channels. Many companies found that selling stock to employees was a cheap and easy way to secure additional capital funds.²⁶ The electric light and power companies were especially prominent in this last respect, employee ownership being coupled in their policies with customer ownership. There were also a few instances in which companies sold stock to their workers because they wanted to get a greater diffusion of ownership or because the leading spirits in the company viewed employee ownership as a desirable condition.

Eligibility. A variety of rules was laid down by the companies for eligibility to the plans. In a large number of cases, all employees were permitted to participate; in others, only "permanent" employees. Often a definite period of service with the company, ranging from one month to five years, was laid down as a prerequisite. Occasionally only those workers who were recommended by their superiors could participate; occasionally only executives could buy stock under the plan. Some companies excluded the rank and file of workers, while others limited eligibility to them. Among other conditions for eligibility there was sometimes the requirement that the subscriber earn above or below a certain amount. In probably the majority of cases, the amount of stock which could be purchased through the company depended on the employee's earnings or his length of service.

Kinds of stock. There was little uniformity in the type of securities sold by the different companies: some sold stock, some bonds. The prevailing custom seems to have been to sell common stock, though preferred stock was also frequently sold. Occasionally, the employee had to buy a block of common and preferred stock combined. A few companies issued special employee stock, usually without voting privileges.

Where the company's regular stock was sold to the workers, it was ordinarily purchased by the company on the open market; sometimes, however, it was treasury stock which the company had previously bought. For the most part, there seems to have been no restriction on the right of the employee to dispose of the stock after he had paid for it in full. Usually the special stock, however, could be sold only to the company and could not be retained after an employee had terminated his connection with the firm.

The price charged by the company was most often that paid by the company in the market, and in a few instances the company merely served as the worker's agent in placing his order with a broker. There were numerous instances, however, in which the substantial contribution supplied by the

²⁶ *Ibid.*, pp. 43-44.

company toward the purchase price made participation in the plan a valuable privilege.

Financing. Apparently without exception, the plans provided for the purchase of the stock in installments. Typically, there was to be a relatively small down payment, the balance being paid from salary deductions; there seems to have been considerable variation from company to company in the size of the deductions as well as emphasis on the regularity of payments. Usually the purchaser was credited with the dividends on the stock and charged with interest on the loan. Under some plans, he received no dividends and paid no interest; under others, he received no dividends but was credited with interest on his installment payments.

Other features. Under most of the plans, employees had the right to cancel their subscriptions, though the employer's permission was necessary in a few cases. Conversely, the employer often had the right to cancel, though for definite reasons such as default on payments, severance of employment relationship, death of the employee, failure to the employee to retain a minimum proportion of the stock purchased, and the like. The administration provisions also varied from plan to plan, it being not uncommon to vest the administration in a joint board of workers' representatives and management.

The effect of the depression. As may be expected, the severe depression in the securities markets shed new light on the subject of employee stock ownership. Many who had purchased stock with high hopes learned to their distress that their stock often was not worth as much as the amount of the unpaid installments. Many who had made rosy predictions about the "new capitalism" and the revolutionary implications of employee stock ownership hurriedly revised their opinions. The Conference Board's report in 1936 indicated that of a total of 2,452 enterprises, only 166 had stock purchase plans, while 209 companies had discontinued theirs; it is also likely that many of the 166 regarded as still in existence were actually dormant. Referring to the mortality rate of stock purchase plans, the report says: "This activity, which promised well as a means of assisting employees to build up a reserve which would earn for them a satisfactory return, encountered conditions in 1929 and subsequent years which, in many cases, made what had been intended as a benefit to employees turn out to be a source of loss. Even where loss to employees was avoided or held within small limits, the demonstration of the great risk involved induced many companies to decide that a more conservative type of thrift plan would probably work out better for all concerned."²⁷

²⁷ *What Employers Are Doing for Employees*, op. cit., pp. 13-14, 38.

Certainly most of those who bought stock at peak prices lost a large part of their investment. The warnings of those who had insisted that the prime requisite for the worker's savings was security and not high return were fully justified. Also demonstrated was the fact that it was extremely undesirable for the worker to invest his money in the firm which employed him since thereby he risked his job and his savings simultaneously. The hope of a new era in industrial relations induced by stock purchasing by employees vanished in a shower of ticker tape.

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Chap. XIII.

QUESTIONS

1. What criticisms have been made of the older methods of payment by time and by the piece? Do you consider these criticisms justified? Why?
2. What is meant by incentive wages? How do they differ in purpose from the older methods of wage payment?
3. Describe the chief types of incentive wages. What features do they appear to have in common?
4. Criticize incentive wages as to methods used in setting the rates and provisions for modification.
5. What ideas underlie profit sharing? How does profit sharing differ from gain sharing and bonus payments?
6. Describe the various types of profit sharing.
7. What are the typical provisions of profit-sharing plans?
8. Discuss the attitude of organized labor toward profit sharing.
9. Has profit sharing been successful? If so, in what respects?
10. Discuss the movement toward employee stock ownership. Do you think it wise? Why or why not?

THE EMPLOYER AND 24 . . . WORKER INSECURITY

NO EMPLOYER can claim to have made a serious beginning on the "solution" of labor problems until he has tackled the question of insecurity. The problems of insecurity are central in the worker's thinking—about himself, his job, and his relations to the employer and to the community. The most constructive steps, therefore, which employers can take are (1) to eliminate the cause of insecurity, as by trying to prevent accidents, disease, and unemployment, and (2) to alleviate the distress due to insecurity, as by unemployment reserves and old-age pensions. Only a small number of American employers have given serious consideration to the subject.

One of the obvious limitations on the extent of employer provision for worker insecurity lies in the very nature of profit-seeking society. If business is very good, an enterprise may spend much money for old-age pensions, for example. But when profits decline or disappear, the temptation to curtail the welfare plans becomes very great. When there are no dividends for stockholders there is a great clamor for the abolition of expensive personnel programs. At such times the argument that personnel activities pay for themselves many times over tends to be shunted into the background and the activities are either abandoned or considerably modified.

There are also marked differences in the social philosophies of business executives. Most employers are inclined to deny any obligation to workers beyond the payment of wages for work done and are not likely to engage in personnel work which does not appear to be immediately profitable.

With these points in mind, we proceed to an analysis of various plans for greater worker security. Between these and the financial incentives described previously there is no clear-cut line of demarcation, for financial incentives should make for greater security through increasing the worker's income, and security plans are in reality financial incentives. The basis of separation lies in employer insistence that the plans here described are intended to achieve long-run security for the worker, whereas financial incentives emphasize current income.

EMPLOYEE SAVINGS PLANS

Some American employers have tried to stimulate their employees to provide for emergencies by systematic savings. Of the several different plans used, some appear to have been more successful than others in withstanding the severe depression from 1930 to 1933.

Savings in co-operation with banks. Plans like these probably owe their origin to the fact that most workers found it difficult and inconvenient to save systematically in banks which were not open for business before or after factory working hours. The general procedure is for the worker to authorize the employer to deduct regularly a stated amount from his pay check and deposit this amount in the bank. The company's treasurer sends a single check to the bank with the names of all employees and the amounts to be credited to them. Conversely, withdrawals are commonly made in the plant, with the company making the payment and being reimbursed later by the bank. The worker may either receive one of the customary bank passbooks or a memorandum from the office indicating the amount of the deduction and the accumulated deposits. In some instances the passbooks are kept by the company; to this practice there have been numerous objections based on the worker's suspicion that relatively large savings would suggest a wage cut.

In many of the earlier plans, the bank of deposit was chosen by the company. This had unfortunate results where the banks failed, for workers were inclined to blame the company for their loss, a loss which at least one company made good. The prevailing practice at the present time is that the worker choose the bank. This increases the amount of clerical work but protects the company in the event that the bank fails.

The number of plans of this type appears to have declined considerably from 1929. In part this has been caused by the decline in banking activity which has left the banks with such a large surplus of lendable funds that the banks have not been anxious to incur the expenses involved in the operation of the savings plans. In larger part, however, the decline has been brought about by the numerous bank failures in the financial crisis which culminated in the bank holiday of 1933. In other cases plans which might have been

continued were abandoned when slack time and lower wages made it impossible for workers to continue their savings.

Company investment plans. Some companies have established plans by which the company itself acts as the bank, receiving deposits, making disbursements, and using the money as it sees fit. Under such an arrangement a somewhat higher rate of interest is paid than under the first plan discussed, a rate of 6 per cent being fairly common. The desirability of such plans is very doubtful if the company invests the money in its own business, for though the worker will benefit if the company prospers, he will lose doubly if the company gets into difficulties. He is in a very real sense putting all his eggs—his job and his savings—into one basket. The failure of the company means that both are likely to vanish simultaneously. Moreover, in a large number of plans the rate of interest paid by the company declined as the company's profits declined.

Many of these plans were abandoned because the company lost money; others were discontinued when federal bank legislation for a time forbade them. Summarizing company investment plans, one writer says:

The most important factor in the survival of these plans is the responsibility and strength of the individual company. The company with such a plan must be sure both of its willingness and ability to guarantee the safety of employee funds. Many of the companies which found it necessary to assume losses to protect the employees' savings have written off their losses and closed their plans. Companies which discontinued plans of this type because of restrictive legislation promptly substituted a bank deposit savings plan or credit union. There are some indications of a reweighing of values even with long-established company investment plans for employee savings, and there is definitely less interest in this type of plan than in bank deposit plans or credit unions.¹

Employee investment trusts. Savings plans of this type involve the investment of the combined savings of employees in securities of the company itself and of other companies. Their recent history has tended to parallel that of other investment trusts. Those which invested all or a large proportion of their funds in legal investments such as United States government bonds have had little or no loss; those which tried to make large profits by trading in securities have discovered that there were few quicker ways of losing money. The connection of the company with the employee investment associations was usually very close and the losses occasioned by the break in security prices influenced most of the companies to abandon their plans.

Building and loan associations. In some instances the savings of employees were invested in building and loan association shares. There seem to

¹ Helen Baker, *Employee Savings Programs*. Industrial Relations Section. Princeton University. Princeton, N. J. 1937. P. 24.

have been two types of plans, one in which an association was formed by the employees of the company, and one in which the company simply encouraged its employees to join an association in the community. As in the case of most financial enterprises whose funds are placed in long-term investments, building and loan shares are not readily convertible into cash in times of stress, so that when workers needed their money most they were not always able to get it. The situation was not made easier by the fact that many workers themselves were in debt to the associations for assistance in building their homes under long-term loan contracts. When the depression came and wages were cut and unemployment increased, the members found it difficult either to keep up their payments to the association or to cash their shares. As a result, they often lost both their homes and their savings. For these and other reasons (such as inefficiency and mismanagement in the association) about one-third of the plans were discontinued between 1929 and 1936, a study by Helen Baker revealing that of twenty-five building and loan plans in 1929, only seventeen survived in 1936.²

Credit unions. In recent years the credit union has become increasingly popular as a medium for handling employee savings, largely as a result of the sponsorship of the Farm Credit Administration. There are now in the United States over 5,000 such unions, with more than 1,000,000 members and savings of over \$100,000,000. The credit union essentially is a device for handling employee savings of small amounts and investing these savings in loans usually restricted to the membership. Shares are ordinarily available for sale at \$5.00 and may be paid for in weekly installments of 25 cents per share. They serve the members in a dual capacity: (1) they yield a return higher than that of the savings bank, and (2) they furnish the employee with a place to borrow funds at a fair rate of interest. This latter is especially important to the workers, many of whom have been bled by "loan sharks" and their usurious practices.

In general credit unions are as independent of management as possible. Yet management has often proved of great assistance to the unions by providing office space and facilities free of charge and by occasionally contributing clerical services and, most important, helpful advice. There is every reason to believe that credit unions will become more important in the future, though their success will depend largely on the honesty and skill with which they are managed.

Conclusion. That employee savings are a valuable safeguard against insecurity there can be no doubt. This management has in many instances perceived and has tried to promote through the inauguration of plans. Be-

² *Ibid.*, p. 14.

sides, management has in some cases made important financial contributions in one or more of the following ways: (1) a guarantee of interest on savings in excess of that paid by savings banks; (2) contribution to the savings on a matching basis, e.g., the company contributes fifty cents for every dollar saved by the worker—in a few cases, the company makes an even more generous contribution; (3) the segregation of a percentage of profits which is apportioned among the savers. On the other hand, it should be noted that these plans will be valuable only in proportion as the employee is able to save from his salary. To the man whose weekly wage always appears inadequate to purchase the necessities of life, even the most generous company offer will seem an empty inducement. Moreover, to the extent that the savings plan constitutes the company's entire personnel program and is based on the idea that the worker can protect himself against insecurity if he only would, these plans can have no important effect on the overwhelming majority of American workers.

SICKNESS BENEFITS

Three methods have been used to protect the worker against the economic results of sickness: (1) mutual benefit associations; (2) employers' plans; and (3) insurance. These do not include the informal provisions which employers often make for sick workers whether through a cash contribution by the company or by a collection taken up among the employees.

Mutual benefit associations. Organizations of this character are akin to the friendly societies in England and to the mutual benefit or "sick benevolent" associations to be found among immigrants in this country. The association may have various functions: it may engage in social, athletic, or educational activities, it may conduct a club journal, it may make small loans (often without interest charges) to its members, and it may sponsor co-operative purchasing. Its most important function, however, is the provision of sickness benefits, with death benefits as a subsidiary activity.

Membership in the association may be compulsory for all employees. Where it is not, the employer may encourage workers to join in various ways. Thus the company may contribute free life insurance to all those who join. It may make large financial contributions to the association or may publicize the association and its activities by means of personal letters to the workers, pay-envelope enclosures, announcements on the bulletin boards, and advertisements in employee magazines. In cases where there are limitations on those who may join, it is common to exclude all those below, say, eighteen years of age, and those over, say, fifty. If older workers are admitted, they are sometimes required to submit to a medical examination or agree to a reduction in the benefit payments. There may be numerous other limitations, e.g.,

only white workers may be admitted, or only men, or only citizens; some associations exclude married women. A minimum service period is often required; this is commonly thirty days, but it may be as much as several months or a year. Initiation fees are usual and generally range from 25 cents to \$1.25.

To protect the association against extraordinary demands on its treasury, precautions are taken to exclude workers who are bad physical risks. Applicants may be required to submit to physical examination, or to furnish a doctor's statement attesting to their satisfactory physical condition, or merely to answer a series of questions about their health (after the manner of many life insurance applications).

It should be emphasized that the bulk of the funds for the operation of the associations comes from the members themselves, though some income may be derived from social and athletic functions. The dues, usually collected by means of pay-roll deductions, may be based on a percentage of wages or salary, may be the same for all members of the association, or may be a fixed amount for each of several classes of employees. If the plan provides for graduated dues, it almost invariably provides for graduated benefits as well. Since widespread unanticipated illnesses, such as epidemics, may deplete the treasury of the association, some groups provide for the levy of assessments on members in addition to their dues. The dues ordinarily are small, seldom exceeding 1 or 1½ per cent of the wage received and sometimes as low as 25 or 50 cents a month.

In almost all cases, the employer contributes to the funds of the association, either by giving an amount equal to a percentage of the employees' dues, varying from 25 to 125 per cent, or a certain sum per member per year; again, the contribution may vary with the salaries and length of service of the members. Occasionally the employer contributes a fixed amount; thus one company agreed to contribute \$25,000 a year if 50 per cent of the employees belonged, and \$50,000 if the membership reached 75 per cent of the working force.³ In addition, employers often bear the incidental expenses of the association, including the cost of management, office and clerical expenses, and association work done on company time. The company may also undertake to guarantee the payment of benefits, to aid in periods of abnormal sickness, and to supervise the financial affairs of the association.

The benefits paid to members are ordinarily fixed at a percentage of the salaries or a maximum sum per week. Half to two-thirds of the weekly wage appears to be the common benefit, though at least one company pays full wages, in spite of the fact that full compensation for illness might be a temptation to malingering. If a certain amount is paid per week, it is usually from six

³ Eleanor Davis, *Company Sickness Benefit Plans for Wage Earners*. Industrial Relations Section. Princeton University. Princeton, N. J. 1936. P. 42.

to ten dollars. In almost no instances are benefits paid for the duration of the illness beyond a specified number of weeks; the maximum number of weeks of benefit payment varies from eight to fifty-two weeks. In addition most plans require a waiting period, usually of six or seven days, before benefits are payable; this eliminates short illnesses and conserves the association's funds.

By the terms of some plans, accident benefits are also paid, even where the worker is entitled to workmen's compensation, though the amount ordinarily is quite small. Provision is occasionally made for medical and hospital care, and some plans provide dental and optical benefits in addition to sickness benefits. The plans which call for the payment of death benefits usually stipulate rather small sums; only rarely do death benefits amount to as much as \$500 with a benefit of \$50 to \$150 being much more common; such sums obviously are barely sufficient to cover funeral expenses. Occasionally the association provides for the purchase of group life insurance policies which permit much larger death benefits; these will be discussed in a later section.

Noncontributory sick benefits. A very few American enterprises have preferred to handle the problem of sick benefits by means of noncontributory plans under which the company bears the whole cost involved. The reasons advanced by these exceptional companies are chiefly (1) that when the benefits are administered by the company the task is performed efficiently, and (2) that workers who contribute to other phases of industrial relations activities ought not be asked to make the additional sacrifice.

Under the noncontributory plans, greater emphasis is apparently placed on length of service than under the mutual benefit associations. Thus many of the former require a service period varying from thirty days to two years as a condition for eligibility to benefits, and the size of the benefits paid in most cases varies with the length of service. One company gives one-half pay (with a maximum of twenty dollars a week) for four weeks to those with three to five years of service; employees with six to eleven years of service are entitled to the same benefit for ten weeks; those with eleven to twenty-five years of service to benefits for twenty-six weeks, and those with twenty-five or more years of service are entitled to benefits for thirty-nine weeks. Another company gives full pay for four weeks and half pay for an additional nine weeks to those with from two to five years' service, full pay for thirteen weeks and half pay for an additional thirteen weeks to those with from five to ten years' service, and full pay for thirteen weeks and half pay for thirty-nine more weeks to those with ten or more years of service.⁴ Such a graduation of benefits is consistent with the company's desire to promote long service. It is interesting to note that the noncontributory plans are not, on the whole, less generous to the sick worker than are the plans of the mutual benefit associa-

⁴ *Ibid.*, p. 20.

tions; one finds more cases of full payment for sickness in the former than in the latter, which may be partly attributable to the large financial resources of the company and partly to the fact that employer contributions to the associations are intended to reduce the cost of administration rather than to increase the benefits.

Some noncontributory plans provide for payments in cases of industrial accidents, even where the workmen's compensation laws apply. In such instances the payment supplements the compensation payments and may take the form of a percentage addition to the compensation, or it may be a payment during the waiting period required by the compensation law, and so on. In addition, most of the plans provide more generous death benefits than do the association plans discussed above, the size of the benefit tending to vary with the length of service.

Sickness insurance. It is being increasingly recognized that sickness benefits, for example, are most satisfactorily provided when the funds are entrusted to a legitimate insurance company. The administrative and clerical phases are greatly simplified and the risk of heavy burdens arising from severe epidemics is obviated. The payment of the insurance premium converts the risk into a cost, and the insurance company thereafter assumes unexpected burdens which it is better able to stand because of its wide coverage.

Where insurance plans are used, the eligibility requirements are usually liberalized, only a relatively short period of service being required of members. The benefits paid, however, are on the whole less generous than under either of the preceding types; it appears that in no case is the sick employee paid full wages and it is likely that the benefits never exceed two-thirds of the wage. Moreover, the benefits are not at all related to the length of service so that the newly eligible employee is entitled to just as much as the man with twenty or more years of service.

Some of the plans offer benefits in addition to the payment for lost time. For example, a plan may contribute toward hospitalization expenses, the worker being allowed a certain amount for each day of hospitalization. Benefits may also be provided for operating room charges, laboratory fees, anesthetics, and similar services.

With the exception of hospitalization plans, there has thus far been no significant movement in the direction of insuring the risk of sickness. There is no question, however, that this type of insurance offers a more desirable, a cheaper, and certainly a safer medium for protection than do either the non-contributory plans or the mutual benefit associations.

Summary. The problem of alleviating the economic hardships incidental to sickness has been attacked from various directions. None of these appears

to be entirely satisfactory, yet collectively they represent a valuable beginning. Increasing awareness by management of the gravity of the problem should, in the absence of a law for public health insurance, result in more vigorous action and more adequate protection for the sick worker.

GROUP LIFE INSURANCE

One of the worker's most crying needs is the protection of his dependents in the event of his untimely death, a need which only a small portion of the working group has been able to satisfy. A glance at the life insurance picture will reveal the reason.

Of the various types of life insurance sold, the following are most common: ordinary life, limited payment life, and endowment insurance, which may, for our purposes, be grouped together, and industrial insurance. The person of average means is likely to buy one of the first three, but even ordinary life insurance, the cheapest, is usually too expensive for the person of low income. At age thirty-five, for example, according to the charges by one of our largest insurance companies, the annual premium for \$1,000 of ordinary life insurance is \$28.11. This premium is reduced somewhat by the dividends paid after some years have elapsed, but the net cost is still more than many workers can afford. It is true, as the insurance companies argue, that as payments on the policy are continued the worker acquires an ever more valuable equity in the policy (that is, the cash reserve) but since the policyholder can realize this equity only upon the surrender of his policy, it is scarcely accurate to describe it as savings, especially since it is lost when the worker dies and the face value of the policy is paid to his beneficiary. What the worker whose income permits no margin for savings needs in insurance is cheap insurance, and he can well afford to forego the fancied luxury of savings offered in ordinary life, limited payment, or endowment insurance.

Some insurance companies offer what is called industrial insurance. Under this, the worker buys a very small amount of insurance and pays for it weekly at the rate of five cents or multiples thereof. Such small payments are attractive to the workers, and many billions of dollars of such insurance have been written. Space does not permit an analysis of this form of insurance, but it is almost universally agreed that it is the most expensive and socially the least desirable of all. The number of policies surrendered after only a few years is astounding and the losses suffered by policyholders annually mount into the millions.

Group life insurance offers a satisfactory substitute. It gives the policyholder a maximum of protection at a minimum cost and, though it has certain undesirable features, presents an adequate solution to the problem of life insurance for the worker. Without entering into the technicalities of this

form of insurance, we may note that all of the employees of the company (the application for the master policy is made by the employer) are grouped together for the purpose of calculating the rate. Hence the rate for each worker is the same, though it varies as the *average age* is higher or lower; thus if the average age is forty, the rate will be higher than if it is thirty, but in either case the rate for one worker will be the same as that for another. Unlike most other life insurance, no medical examination is required of those who have group insurance policies, presumably because of the broad coverage.

The essential point of this type of insurance is that the policy purchases protection and nothing more. The premiums are small and do not allow for the accumulation of any equity or cash surrender value. If the policy lapses or is surrendered, the worker gets nothing back, but the net cost of the insurance in most cases is substantially less than that under any other policy. To this should be added the distinct advantage accruing from the fact that under most group insurance policies the employer bears all or a large part of the cost. And even where this is not so, the premiums are deducted from the worker's wage and paid directly to the company by the employer so that there is no danger that the employee will permit his policy to lapse either because he has not been provident enough to accumulate the amount of the premium payment or has found some other more pressing need.

Since 1911 an ever-increasing number of companies have protected their employees through group life insurance; at the end of 1933 the volume of group insurance in effect was estimated at about \$9,000,000,000, covering about 4,500,000 people.⁵ The practices of different employers in this respect vary materially. In some instances a fixed amount of insurance is written for each employee; in others the amount of insurance is based upon the employee's yearly wage or upon his rank in the enterprise; in still others it is a progressive amount rising with the employee's service with the company. One drawback should be mentioned: if the employee leaves the company, his policy lapses automatically and ordinarily can be reinstated only upon the payment of much higher premiums based on his age at the time of quitting.

SECURITY IN OLD AGE

That some employers have given attention to the problem of the aged worker is scarcely surprising; extending back into the days of slavery there is a long tradition of care for the worker after he has outlived his economic usefulness. The tradition, of course, conflicts with the profit-seeking motive prevalent in modern industry and with its corollary that it is "each man for

⁵ *Handbook of Labor Statistics*. United States Bureau of Labor Statistics. Bulletin No. 616. Government Printing Office. Washington, D. C. 1936. Pp. 377-79.

himself and the devil take the hindmost." We find, therefore, that not all employers behave in the same way; some manifest the characteristics of the "economic man" in their ruthless discharge of workers who have passed their peak of efficiency; others, on the contrary, seem always to have felt some sympathy for the aged worker and either retain him on the pay roll in a lesser capacity or retire him on a pension. Numerically the latter are insignificant in comparison with the former, but they include many of the largest American enterprises. It is quite possible that had workable private pension plans for workers been extended on a much larger scale the necessity for state and federal legislation on the subject would have been obviated.

Reasons for private pension plans. The argument has often been advanced that private pension plans rest fundamentally upon the moral obligation of the employer to provide for his superannuated employees. It is said that the wages paid the worker do not equal the contribution he makes to the welfare of the business. Besides, it does not appear just to many people that a man who has worked at a particular job for thirty or forty years should be cast adrift at an advanced age to become an economic burden to his family and to the community. It is asserted that it is difficult, if not impossible, for the average worker to accumulate enough money during his working life to provide for his old age. Not merely the shiftless and improvident workers attain the age of sixty-five or seventy without any savings; even the provident and industrious can seldom amass more than a bare pittance, for unemployment, accidents, and disease, together with the normal expenses of living and raising a family, are likely to eat up the modest weekly income.

On the other side of the argument, it is insisted that the employer's moral obligation to his employees is fully discharged upon the payment of a fair wage; that they are entitled to nothing more than this; and that, in any case, it would be manifestly unfair to place the moral burden on the shoulders of the last employer. Those holding this last position feel that if pensions do represent a moral obligation, they are a moral obligation of all the employers collectively for whom the employee has worked, and they are inclined to argue that the burden should be placed upon industry as a whole rather than upon the last employer.

While the question of the employer's moral responsibility may be significant in the passage of old-age pension laws, its importance for private pension plans is limited to the degree to which employers themselves recognize such responsibility and act accordingly. Since the private plans are voluntary, the motives to be considered are those of the employer and not those of others in the community. This is not to say that many employers do not feel a sense of responsibility. Quite the contrary would appear to

be the case, judging from the statements of employers themselves.⁶ But this motive seldom stands alone. As the National Industrial Conference Board observed: "Benevolence on its own account, however, cannot long be indulged by the management of a business, particularly when it begins to involve substantial expenditures. To be a legitimate charge on the corporation's income, it must be subordinated to other objects—such as are at least of potential advantage to the business."⁷

What, then, are the other objects of private pension plans? One which is urged very often is that the pension serves as a reward for long and faithful service, quite apart from the fact of the employee's need; that is, each employee who has rendered loyal service over many years is held to be entitled to a reward even though to withhold the pension would not pauperize the worker. As we shall note presently, however, the desire to reward the faithful old employee is itself commonly subordinated to other objectives, among them, efficiency.

Pensioning old employees may conduce to efficiency in two ways: (1) by removing the superannuated, and (2) by stimulating the active force to efficiency. As the study above quoted says: "One of the most important though least readily avowed of the purposes of a pension plan is to be found in the freedom it confers on the employer to eliminate from his force any employee who, owing to age or incapacity, is no longer efficient at his work. The necessity of discharging a faithful employee grown old and infirm in the service is not a pleasant task for any employer to face. It frequently impels him to take refuge in various uneconomic expedients, such as retaining the employee on the pay roll at reduced pay, assigning him to other employment less arduous, or doling out relief to him from time to time."⁸

Getting the older workers out of the way makes it possible to keep open the avenues of advancement within the enterprise, since it removes the spirit of hopelessness which often characterizes young men whose opportunities for promotion are blocked by the presence of old, incompetent people. Moreover, it is felt that the worker who has the assurance of a pension in his old age will be a more contented and hence a more efficient worker.

Closely related to this is the hope that the pension plans will reduce labor turnover and promote length of service. The prospect of a pension is said to create in the worker a spirit of loyalty which makes him want to remain with the company. As his years of service mount, he acquires a sort of "vested interest" in the pension so that he will be less likely to leave voluntarily in order to enter other employment.

Still another reason for some pension plans is the desire to avoid union-

⁶ National Industrial Conference Board, *Industrial Pensions in the United States*. New York. 1925. P. 24.

⁷ *Ibid.*

⁸ *Ibid.*, p. 28.

ization and, in particular, labor disputes. Resistance to unionization might result partly out of a feeling of gratitude toward the company but perhaps even more out of the fact that going on strike often means the loss of service credit toward the pension, a loss which the older employee may be unwilling to risk.

A desire to create, or retain, a favorable public opinion may also stimulate a company to inaugurate a pension plan.⁹ Finally, it should be said that many companies adopt old-age pension plans less because of any preconceived advantages than because "it is the thing to do." There are fashions in industry as well as among consumers, and the spirit of emulation appears to be strong enough in the former to make some companies adopt plans because other companies have them.

Development of the private pension plans. There is no record of any private old-age pension plan prior to 1874, and the plan which was adopted in that year was changed so completely in 1908 that it became virtually a new plan. According to Latimer, of 393 plans which were active in 1929, 8 had been established between 1874 and 1900, 23 between 1901 and 1905, 29 between 1906 and 1910, 99 between 1911 and 1915, 110 between 1916 and 1920, 68 between 1921 and 1925, and 56 between 1926 and 1929. Besides these were 28 discontinued plans, making a total of 421.¹⁰ Including 4 plans discontinued between 1927 and 1929, the same source fixes 3,745,418 as the total number of employees covered by plans of companies which reported; to this number should be added the number of employees of those companies which did not report. This total of 397 plans is divided as follows: in manufacturing enterprises, 168 plans with a reported coverage of 1,283,217 employees; in public utilities, 74 plans with 696,975 employees; in railroads, 48 plans with 1,572,628 employees; in banking, 45 plans with 35,791 employees; in insurance, 25 plans with 83,865 employees, and 37 other plans with a total of 72,942 employees reported.¹¹ It is interesting to note in these figures the preponderance of plans among railroads and public utilities; though the plans in these two classes aggregated less than one-third of the total plans reported, the number of workers covered amounted to almost two-thirds of the number covered by all the plans.

A report by the National Industrial Conference Board in 1931 cites 420 plans with a coverage of 3,752,759 employees. Here, as above, steam railroad and public utilities plans predominate. The 121 plans in these 2 categories accounted for 60.4 per cent of the total coverage; the plans of manufacturing enterprises amounted to 42.4 per cent of the number of plans but covered

⁹ Murray W. Latimer, *Industrial Pension Systems in the United States and Canada*. Industrial Relations Counselors, Inc. New York. 1932. II, 896.

¹⁰ *Ibid.*, I, 42.

¹¹ *Ibid.*, p. 47.

only 34.4 per cent of the number of workers under all plans.¹² The outstanding position of the railroads and the public utilities may perhaps be accounted for in part by the semipublic nature of the enterprises, in part by the early development of the corporate form in these industries, and in part by the relatively large size of the companies involved.

From the available data it would appear that formal pension plans are more likely to be adopted by large companies than by small ones. Only 125 plans out of 360 were adopted by companies with fewer than 1,000 employees; these accounted for but 1.4 per cent of the total number of workers covered. On the other hand, plans of companies with 10,000 or more workers accounted for 82.8 per cent of the coverage.¹³ Moreover, of the 200 largest nonfinancial enterprises (as measured by their gross assets) in the United States, 87 or 43.5 per cent had pension plans;¹⁴ this percentage is much higher than that prevailing throughout industry. It is quite probable that the relatively greater frequency of pension plans among the larger and wealthier enterprises is to be explained by the tremendous resources of these companies. The larger companies are more likely to have developed a comprehensive personnel program of which pension plans are an integral part. It should also be added that the huge enterprises may have had the advantage of better planning which might make them less fearful of the financial consequences of the pension plan than the small business, which usually lacks expert guidance.

The figures given for the plans and the coverage may be viewed as practically the height of the movement, for, though data for the period since 1929 are not readily available,¹⁵ the financial experience during the depression was not conducive to the establishment of expensive pension plans. Moreover, since 1935 there has been an added deterrent in the form of the Social Security Act which, it was widely charged, would cause most companies with plans to abandon them. More will be said of this after we have analyzed the plans themselves.

Types of plans. Pension plans may be formal, involving the setting up of a comprehensive plan, or they may be informal or discretionary. The latter leaves "the largest possible scope to the employer's judgment in the disposition of each individual case. He reserves to himself the right to determine not merely who shall be retired, but also the conditions under which each retirement shall become effective, the amount and duration of the

¹² National Industrial Conference Board, *Elements of Industrial Pension Plans*. New York, 1931. P. 1.

¹³ Adapted from Latimer, *op. cit.*, p. 57.

¹⁴ *Ibid.*, p. 58.

¹⁵ In 1936, the National Industrial Conference Board reported 253 formal pension plans, 580 informal plans, and 64 not specified among 2,452 companies studied. National Industrial Conference Board, *What Employers Are Doing for Employees*, *op. cit.*, p. 33.

allowance, as well as other features of the arrangement. Under these conditions, the allowance is in the nature of a charitable gift or dole designed to relieve or prevent distress in certain cases."¹⁶ The chief advantages claimed for the informal pensions are their flexibility, which permits adjustments to suit the individual case; also, they permit a personal touch; in addition, they are likely to be relatively inexpensive since only needy employees are granted pensions. However, informal plans are said to put a premium on thriftlessness by the requirement that the recipient be in need; moreover, unless such plans are properly financed they quickly fall to pieces.

The formal plan may be contractual or noncontractual; i.e., the worker may or may not acquire a legal right to the pension. Probably most of the plans are noncontractual and hence may be ended or altered, and pensions reduced or suspended at the will of the management. No plan is fully contractual in the sense that the company is bound to continue with the plan and meet all claims that might possibly arise under it. However, there are many plans of a limited contractual nature. These ordinarily provide that the pensions already in force are to continue until the recipients die, even though the plan is abandoned in the meantime; that the employee, in the case of a contributory plan, is to receive his contributions back with or without interest if he leaves; and that changes in the plan will not affect benefits arising out of previous service or contributions paid prior to the alteration.

Pensions may also be contributory or noncontributory, depending on whether the worker himself contributes to the pension. In favor of contributory pensions it is asserted that the contributions make possible adequate pensions without placing too great a burden on management; (2) the active co-operation and the interest of the workers are obtained; (3) the participants in the plan are trained in habits of thrift; (4) the contributions do away with the charge that the plan is paternalistic; (5) since both employer and employee benefit from the retirement of the superannuated, both should share in the cost.¹⁷ Those favoring noncontributory plans argue that wages are ordinarily insufficient to permit workers to set aside a portion of their earnings. Further, many employers are fearful of contributory plans because of the possibility that the worker may acquire legal claims against the company which might prove very embarrassing. Nevertheless, there seems to be a trend in favor of contributory plans, though employees covered by such plans are far less numerous than those covered by noncontributory plans. Occasionally there may be a combination of the two with the provision of a basic minimum for noncontributors and an additional allowance for contributors. Other plans, of the "package" or "complete protection" variety,

¹⁶ *Industrial Pensions in the United States*, op. cit., p. 42.

¹⁷ *Elements of Industrial Pension Plans*, op. cit., pp. 15-18.

combine old-age pensions with sickness and accident insurance, and so on, to which the worker contributes.

Eligibility. The chief requirements for eligibility for pension benefits concern the age of the worker and his service record with the company; there may also be provisions concerning disability. If the plan does not apply to all employees, it may include only the factory hands, for example, or the office and managerial force, or only men, or only those earning a certain salary, and so on. Most of the plans apparently extend their benefits to all employees. Some contributory plans cover only employees who desire to join.

Benefits. In the determination of benefits, factors commonly considered include length of service, average wage or salary earned, or the rate and period of contributions. While some plans provide a uniform amount for each pensioner, most vary the pension according to these criteria. A method frequently used takes a percentage of the average annual salary for the last ten or fifteen years of service and multiplies it by the number of years of service, the product being the annual pension. Thus suppose a worker whose average wage was \$1,500 is pensioned after thirty years of service with a 1 per cent rate. One per cent of \$1,500 multiplied by 30 (years of service) gives \$450 as the annual pension. Naturally some plans are more generous than others, so that the percentage may be $1\frac{1}{2}$, 2, or even more. Occasionally the percentage may be graduated with prolonged service; occasionally, too, the wage figure which is used as the base may be the average for the whole period of service instead of that for the last five or ten years. In the latter case, it should be noted, the pension will be considerably higher, for many workers are likely to be at their maximum earning just before retirement. The pensions are normally granted for the life of the pensioner, though there are some plans which provide only for a limited number of years, and others which include a death benefit, payable to the beneficiaries of the pensioners. It should be emphasized that adequate benefits are vital to the success of the plan; unless retirement is made compulsory, workers are not likely to give up a job for a pension which amounts to only a small fraction of the wage.

Financing. A great many plans have been badly managed. One of the earliest methods of financing, and undoubtedly the worst, consisted of appropriations by the company for the pensions as necessary. Each week or each month, the company would draw upon its treasury for the amount of the pensions in precisely the same way as for other expenses. Since no provision was made for the future, such companies after a while frequently found themselves facing a growing burden on their finances. Other companies put

aside periodically an amount of money to be used as a sort of endowment, the income being used to pay for the pensions. This plan is not likely to be successful unless the fund is very large and continues to grow in proportion as the pension obligations grow. There may be a combination of methods: that is, an initial fund supplemented by periodic appropriations. Undoubtedly the best method of financing is that under which reserves are set aside regularly on an actuarial basis; this permits the accumulation of funds for each worker. There is no necessity for the company to guess as to the future nor is there the same likelihood that the company will subsequently be forced to abandon its plan because of the heavy cost.

Criticisms. Perhaps the most serious criticism of private pension plans is that they tend to depend on the whim of the employer. Not only before the pension has been granted but even after it has been in force for years, the company may amend its terms. Bad business, failure of the company, even mergers and consolidations may end the plan. Pensions have also been used as a weapon against strikes, the strike being regarded as a break in the continuity of service. From the point of view of the worker they have been criticized because they tied him to a job he might otherwise leave, since the older he becomes the more valuable is his pension right. Moreover, as we noted previously, a large number of the plans were not properly financed and hence proved a bitter disappointment to workers who had pinned their hopes to them.

Private pension plans and the Social Security Act. The prediction that the Social Security Act would lead to the abolition of most private pension plans does not seem to have come true, though undoubtedly there will be, as there have already been, modifications in the private plans. That there will be ample room for supplementary private plans is evident from the statements of many corporation officials concerned with the plans. One of these pointed out some years ago that there were at least the following reasons why a private supplementary plan should be adopted: (1) many employees are already too old to be eligible under the Social Security Act or else would be entitled, because of their present advanced age, to very modest benefits; (2) the average pension which will be paid under the law will almost certainly be far less than the maximum in the overwhelming number of cases and will have the undesirable result of lowering the level of existing pension plans unless supplementary payments are made; (3) provision should be made for the retirement of those who become incapacitated before the retirement age contemplated by law; (4) even if the law will ultimately make it possible for people to retire before sixty-five, the reduced rates will "make it desirable from the standpoint of the individual employer to appropriate

capital sums in an amount sufficient to bring the total pension up to a practicable figure"; (5) provision should be made for executives, supervisors, and others whose annual salary exceeds the maximum used by the law as the basis for calculating pensions; (6) women, who under the law are to be retired at sixty-five, should be retired at an earlier age, and hence will need supplementary compensation.¹⁸

Conclusion. Regardless of the motive behind individual plans, it may be said that on the whole they supply a vital need as far as they go. There are few shortcomings which would not yield to constructive efforts to overcome them. Private plans operated through the purchase of annuities from an insurance company seem to be the most desirable, for they assure at once the safety of the funds and the freedom of the worker from the coercion said to result from the operation of other plans.

THE PREVENTION AND RELIEF OF UNEMPLOYMENT

Until relatively recently, few employers paid serious attention to the problem of unemployment, except to participate with other members of the community in public and private relief of the destitute. There were, of course, employers who preferred to continue operations at a loss rather than throw many men out of work; but, in the nature of things, the relief from this quarter could at best be only slight and temporary. For the most part, employers, consciously or unconsciously, refused to admit that they ought to assume part of the burden either by trying to prevent unemployment or by making financial provision for the unemployed. A contributing factor may have been their realization of the enormity of the problem, especially during periods of depression, and of the financial costs involved. Still it is strange that relief for unemployment should have lagged so far behind private old-age pension plans; it would seem that employers would stand to gain much more by providing unemployment relief, however temporary, than for the payment of pensions to superannuated employees. At best, pensions could appeal to most workers only as a prospective benefit, available only many years in the future; unemployment relief, on the other hand, is an immediate benefit and probably carries a more effective appeal to the workers' loyalty and interest. If this aspect of the problem presented itself to employers at all, it apparently had little weight.

Not all employers, however, were oblivious to the needs created by unemployment; those who recognized a social obligation to their employees or

¹⁸ J. W. Myers, "Effects of Probable Legislation on Company Pension Plan," *Economic Security: Pensions and Health Insurance*. Personnel Series. No. 20. American Management Association. New York. 1935.

felt that some benefit was to be derived from a policy of unemployment relief adopted a variety of measures to cope with the problem.

Regularization of production. Among the most significant of these measures were those which sought to eliminate unemployment, at least that resulting from seasonal fluctuations, by stabilizing the level of production and keeping it at an even keel. Much interest was manifested in regularization in the years following the World War and many methods of achieving this state were suggested. (1) Production for stock: to avoid fluctuations resulting from manufacturing goods as needed for the market, many employers have tried to stabilize production and to store those goods not needed at the moment; this obviously is not feasible in industries in which the style element is important or in those cases in which the financial resources of the employer do not permit the accumulation of large inventories. On the other hand, where highly standardized products, such as soap or electric lamps, are concerned, and where there is no danger of deterioration in the product, production for stock may profitably be carried on. (2) Promoting off-season sales: this may be accomplished by extensive advertising campaigns or by offering price concessions during the dull season; in some industries, such as those which have to combat firmly fixed consumer habits, the attempt to promote slack season sales has met with only indifferent success. (3) Diversification of production: some companies have found it possible, and very profitable, to add a sideline to their major product; this has enabled fuller utilization of the plant and has permitted more regular employment. Thus one company which formerly engaged solely in the manufacture of radios added to its line electric refrigerators, electric washers, and similar products. Another company manufacturing men's clothing decided to manufacture children's clothing during slack periods. (4) Advance orders: determined efforts, even at the cost of price concessions, are made to get dealers to order as far in advance as possible. The company is thus enabled to plan its production long in advance. (5) Standardization of the product: it has often been found that one of the major obstacles to regularization of production lay in the fact that there were too many sizes or styles of the product so that the manufacturer had to await his customers' orders before beginning production. The reduction in the number of sizes or styles has enabled the producer to concentrate on a relatively few variations. (6) Finding new uses for the product: aggressive and ingenious industrial research has on occasion succeeded in developing new uses for a product, considerably extending the market and permitting regularization. (7) Finding new markets for the product: wholly new areas may be attacked by the selling force in the desire to find a new source of demand which would supplement the old; e.g., the

demands of customers in South America come at a different period from those in North America and permit the stabilization of production.

Among other suggestions for regularization are the budgeting of sales and production to permit accurate forecasting, and the creation of off-season uses for seasonal goods. Another valuable method, but one which is usable only under rather specialized conditions, is that of dovetailing the seasons of different employers or even of different industries: that is, workers of one company whose busy season runs from May to October may be transferred at the end of the period to another company whose season runs from November to March. To be effective this method requires an extremely careful study of the labor market and a co-operative effort by all employers concerned to fill as many gaps in employment as possible. There may also be other obstacles such as the diversity of skills required in two different plants and the possibility that dovetailing may require the worker to move to another community.¹⁹

Regularization of production may prove very advantageous in lessening seasonal unemployment, but there are numerous instances in which regularization is not practicable and others in which, though it appeared practicable, has proved unsuccessful. In any event, regularization is scarcely to be regarded seriously as a preventive of cyclical unemployment.

Dismissal compensation. It has long been the practice of certain employers, when discharging their men, to give them some money in lieu of, or in addition to, notice of impending dismissal. Commonly this practice is an informal one, and the amount paid is determined largely by custom, being usually two weeks' pay. In cases where a more formal procedure is used, a scale of dismissal benefits may be established, the amount paid to any worker varying with his years of service, his record with the company, his wages, and so on. Where large numbers of workers are dismissed, as when a company is going out of business or is moving to another section of the country, special schedules may be set up with the payments depending, in addition to the factors mentioned above, on the workers' chances of getting other jobs quickly. In the case of one textile company which felt it necessary to dismiss one-fifth of its force, the names of all those selected for dismissal were referred to the board of directors of the company for approval together with a statement of each man's ability, length of service, and family responsibilities. "The Board of Directors voted to take from an employment reserve fund enough money to pay two weeks' wages to each one selected for lay-off. Inasmuch as it was nearing vacation time, an additional week's pay was allowed in place of a vacation. A profit-sharing distribution for a

¹⁹ Edwin S. Smith, *Reducing Seasonal Unemployment*. McGraw-Hill Book Company. New York. 1931. P. 251.

six-months' period, which was due about that time, also added between two and three weeks' pay to the amount received. Thus, each employee was granted from five to six weeks' wages when he was laid off, with the further promise of the sum to which he would be entitled in the event of another profit-sharing distribution at the close of the year."²⁰ When Hart, Schaffner and Marx Company found it necessary to dismiss some of its cutters, an agreement was worked out with the union by which each man who was laid off or volunteered to leave was given \$500, some of which came from the unemployment fund and the rest from the company.

A very interesting agreement between men and management in the matter of dismissal compensation is that arrived at between the railroads and the railroad unions in May, 1936. It was provided that any employee who was dismissed as a result of the consolidation of roads was to be entitled to a "co-ordination allowance" of 60 per cent of his average monthly wage for the last twelve months of employment for periods of time depending upon the length of service. The allowance was to last for six months if the length of service was one year and less than two years; for twelve months for service of two and less than three years; eighteen months for service of from three to five years; thirty-six months for service of from five to ten years; forty-eight months for service of from ten to fifteen years, and sixty months for service of fifteen years and over. At the employee's option, a dismissal or separation allowance was payable in a lump sum at the time of dismissal amounting to three months' pay for service of from one to two years; six months' pay for service of from two to three years; nine months' pay for service of from three to five years, and twelve months' pay for service of five years and over. In addition, the employer was to reimburse the worker for any loss suffered in the sale of his home from which he was required to move; similarly, losses involved in cancellation of leases were to be paid by the company, which was also to pay for the moving expenses of workers who were required to move in accordance with the plan for railroad consolidation. If this plan seems very liberal, it should be remembered that it was a price which the railroads were paying for the consent of the railroad labor unions to the plans for railroad consolidation blocked up to that time by the legal requirement that no workers were to be discharged in any consolidation of roads.

Dismissal compensation is often paid as a matter of simple kindness, arising out of the feeling that the dismissed worker will be seriously handicapped during a period of readjustment or while he is looking for other work. Often it is regarded as merely "good business"; that is, payments are made in order not to alienate the goodwill of consumers and of the com-

²⁰ National Industrial Conference Board, *Lay-Off and Its Prevention*. New York. 1930. P. 60.

munity, both of which have effective methods of retaliation. And, of course, the company likes to have the remaining workers feel that it will treat them considerably too if they are discharged. Nevertheless, workers often criticize the company bitterly if an old employee who has lost his usefulness is dropped summarily and is given two weeks' pay "to quiet the boss's conscience."

Along with dismissal compensation employers may make other efforts to help those about to be discharged, especially if large numbers are involved. Diligent search for other openings may be made by letter, telephone, or advertisement. Workers may be given time off to look for new jobs, and all other possibilities may be canvassed.

Evaluation of dismissal compensation is difficult unless one is familiar with the facts in a particular case. We may note that the compensation presupposes permanent separation from the working force, not merely a seasonal layoff. In good times, the payment may tide the worker over between jobs; in depression, it merely postpones for a short period the pinch of need. For the older worker, in good times or bad, it often represents the final payment from industry for a lifetime of work.

Guaranteed employment. A very small handful of American employers have undertaken, within recent years, to assure certain of their employees at least a minimum number of weeks of work each year, those who worked a lesser number of weeks being paid for the idle time. This is as close as we have come in America to the idea of an annual wage under which the worker becomes an overhead cost to industry. Basically, guaranteed employment is but a logical continuation of regularized production and has both its virtues and defects. Undoubtedly the best known of the guaranteed employment plans is that of the Procter & Gamble Company, which has been summarized as follows:

The employment guaranty applies to all employees, both in factories and district offices, whose wages or salaries are less than \$2,000 a year and who have been with the company 6 months or longer, provided they enroll themselves in the profit-sharing plan. Such employees are guaranteed 48 weeks' work a year at full pay, "less only time lost by reason of the customary holiday closings or through fire, flood, strike, or other extreme emergency." Employees may be transferred from one job to another to keep them at work and under such circumstances are paid their regular hourly wage rate. A record is kept of the amount of time lost by each employee because of the inability of the company to provide work and when such lost time exceeds 200 hours, representing the 4 weeks not covered by the guaranty, payment is made at the regular rate provided the employee reports for work.²¹

²¹ National Industrial Conference Board, *Unemployment Benefits and Insurance*. New York. 1931. P. 101.

Another well-known plan of this type is that of the Columbia Conserve Company under which

A yearly guarantee of full salary for 52 weeks, including vacations, is given to every office and factory employee who is elected by his fellow workers to the salaried group. . . . Those who are not placed on the salary basis but remain wage-earners, are guaranteed fifty hours' employment a week at a fixed hourly rate during the period they are employed. . . . If because of stoppages or some other emergency beyond the control of the workers, the plant cannot furnish a full day's work to a wage-earner, he is nevertheless paid a full day's wage. Workers are transferred according to departmental needs without any change in compensation.²²

The few guarantees of employment which have been tried appear to have been successful but it is quite unlikely that the idea is applicable in any considerable number of cases.

In those branches of industry which are least affected by business depression, it may be possible to bring about the regularization of operations that is an essential requirement for the success of a guaranteed employment plan. The majority of companies, however, would find it difficult to stabilize operations to the extent required and would be unable to carry the financial burden involved in the payment of full-time wages to those workers for whom work could not be provided. Moreover, the obstacles in the way of the transfer of employees from one department to another, an important feature of the employment guaranty policy, are probably greater in many instances than those encountered under the plans described above. The guaranty of steady employment undoubtedly contributes an incentive to the elimination of the effects of seasonal fluctuation, but the inapplicability of that policy to the more serious problem of cyclical fluctuations makes improbable the general adoption of guaranteed employment plans.²³

Private unemployment insurance plans. Little need be said about the dozen or so private unemployment insurance plans. Some of the plans have been operated in conjunction with labor organizations, the rest have been run by the employer alone. The General Electric plan provided for contributions by workers of 1 per cent of the earnings, with the company contributing an equal amount. Benefits were to be paid to those unemployed for more than two weeks in an amount equal to 50 per cent of the average full-time earnings, with a maximum originally set at \$20 per week. The plan also provided for emergency loans to workers.

The Leeds & Northrup Company plan called for the setting aside by the company of 2 per cent of the pay roll. The benefits were to amount to 75 per cent of the income at the time of layoff for employees with dependents

²² Bryce M. Stewart and Others, *Unemployment Benefits in the United States*. Industrial Relations Counselors, Inc. New York. 1930. Pp. 478-79.

²³ *Unemployment Benefits and Insurance*, *op. cit.*, p. 103.

and 50 per cent for employees without dependents. The duration of the benefits was to vary with the length of service, ranging from three weeks for employees with three months' service to twenty-six weeks for employees with five or more years of service.²⁴ Among the other companies which established plans are the Dennison Manufacturing Company, the Dutchess Bleachery, S. C. Johnson and Son, and Brown and Bailey Co.

Most of the plans were foredoomed to failure because of improper financing. In several cases no money appears to have been put aside, which meant that unemployment would prove a heavy drain on the company's treasury as soon as business slackened. In other cases, an initial fund was appropriated but no additions were made, a situation almost as unwise as the first. Quite apart from the matter of financing, it is scarcely likely that private plans could operate effectively against the pressure of widespread unemployment. Seasonal unemployment may possibly be handled without too great a strain, particularly if determined efforts are made at regularization. But when depressions arrive, the problem takes on an altogether different aspect; when the number of unemployed mounts into the hundreds and the thousands in a single company, even large reserves cannot withstand the drain. The answer apparently lies in public unemployment insurance, perhaps with financial assistance from the government.

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QUESTIONS

1. Describe the various plans used to stimulate employee savings.
2. Discuss the advantages and disadvantages of each of these plans.
3. What provisions have been made to protect workers against economic distress caused by sickness? Is activity in this field a duty of the employer? Why or why not?
4. How do you account for the increasing emphasis on group life insurance? Discuss the differences between group and ordinary insurance.
5. Describe typical provisions in company plans for old-age pensions.
6. What criticisms have been made of private pensions? Do you consider these criticisms justified? Why or why not?
7. What is meant by regularization of production? List and explain some of the ways in which production may be regularized.
8. Regularization of production has at best only a limited usefulness. Do you agree with this statement? Why or why not? What qualifications would you make on this statement?
9. What is meant by guaranteed employment? Describe the provisions of a plan of guaranteed employment? What are the limitations on this as a cure for employment?
10. Describe the movement toward private unemployment insurance plans. How do you account for the lack of success of these plans?

IN OUR discussion of personnel programs and welfare activities, we made only incidental reference to trade-unionism and the organization of labor. It should be kept in mind, however, that often one of the strongest incentives to the adoption of personnel programs is the hope that these programs will divert the worker's interest from independent labor organizations. It is no mere accident that where organized labor is strong there tends to be rather little in the way of welfare activities, and vice versa. Not that the presence of welfare activities in an enterprise of itself indicates hostility to unions; there are many bitter antiunionists who object strenuously to personnel programs. The striking thing is rather that the impulse toward such activities should so often be grounded in antiunionism.

It should not be thought that all employers fall into this category. Instead there are many who do not object to the unionization of their employees and may even go to some trouble to assist the union in organization. Sometimes this feeling of the employer is the result of his social or economic philosophy; he may believe in the right of workers to organize for their economic betterment. More often this friendliness on the part of the employer arises out of a genuine conviction that the union benefits the employer as well as the worker. There have been many industries suffering from cut-throat competition whose labor costs have been stabilized by union aid. Occasionally, too, employers have benefited by advice given by union technicians on various aspects of their business. Likewise, the union may aid the employer by giving him the right to use a union label which, because of the union's efforts, is the best selling point an article could have for labor-conscious consumers. There are also cases in which certain employers have

combined with certain unions for their mutual benefit and for the disadvantage of the public generally; this has been found in the building trades more often than in any other industry.

Other employers, while not friendly to unions, dare not oppose them openly. This is particularly true of small employers in a highly organized industry; the union's economic power compels the employer to deal with the union whether he likes it or not. Such employers often come to take the union for granted as a significant factor in the industry. They learn to live under a union contract and rarely challenge the right of the union to represent the workers.

It is probably true, however, that the overwhelming proportion of employers object bitterly to trade-unionism and devote every effort to preventing the organization of their own employees. Not infrequently their fight against the union proves far more expensive than peace under a union contract would have been; every now and then one hears some prominent American industrialist say that he would rather close his factory permanently than deal with the union. So pervasive is this attitude among employers and so slowly does the concept of collective bargaining grow that one is impelled to ask the reason for this desperate antagonism.

Unions represent an economic menace to the employer. By their demands for concessions in wages, hours, and working conditions, they place increasing pressure on the profits of business. To be sure, there are instances in which this matters little to the employer since he promptly passes on the increased cost to his customers in the form of higher prices. For the most part, however, this transfer of cost is not easily accomplished. Customers may show an unexpected resistance to increased prices; competitors who do not deal with the union may offer their goods at a lower price. The result may well be that the increased cost will have to come from the employer's profits. Without doubt, then, the great bulk of employers' objections to unionism are to be explained by the effect of successful union activity on profit margins.

Moreover, in the pursuit of its objectives, the union often resorts to measures which are financially harmful to the employer. A prolonged strike, even though it finally culminates in a sweeping victory for the employer, is likely to be very costly because of the expenses involved in fighting the strike, the loss of business during the strike, the possible loss of consumer goodwill, and the possible destruction of property. Idle plants, especially those representing a large investment in fixed capital, are more galling to the owner when the idleness is caused by a strike than when it is caused by bad business.

Sometimes the economic disadvantages accruing to the employer from union policies and tactics are not so clear as when the issues revolve

around wages and hours, but they are real nevertheless. A union requirement concerning, for example, the size of a railroad train crew is opposed by the company, which feels that a smaller crew can do the job efficiently. A requirement that the whole working force start and stop at the same time may, by prohibiting the "staggering" of the force, result in higher unit costs. A requirement that all the available work in slack periods shall be divided among the whole working force may mean greater costs than would be incurred if part of the force were laid off entirely. The establishment of a closed shop may mean that the employer is deprived of the opportunity of hiring a very efficient worker who is not a member of a union. The application of the principle of seniority may compel the employer to lay off an efficient young worker and retain a much less efficient veteran.

Much expense and annoyance for the employer are also involved in industries in which craft unions constantly engage in jurisdictional disputes. In the building trades, for example, construction projects are sometimes tied up for considerable periods of time, not because of any controversy between the employer and his workers but simply because two or more craft unions demand jurisdiction over a particular part of the work. When the sheet metal workers quarrel with the carpenters over the hanging of sheet metal doors, the result is often a prolonged delay in the completion of the job. So long, then, as jurisdictional disputes persist, the employer will have a legitimate grievance against the unions involved. Besides, employers also resent, though with less cause, various other union rules which they regard as archaic or unnecessary. Apprentice regulations, for example, evoke severe criticism from employers, especially in so far as they limit the number of apprentices to be admitted to the trade and prolong unnecessarily the period of apprenticeship.

It would be a mistake to suppose, however, that the employer's objection to unionism is entirely economic in character. To understand the typical employer's position in the matter of unionism we have to consider other less tangible factors. First, and most important, is the fact that our whole economic system is based upon private property and free enterprise. The employer invests his money in the business and thereafter feels that it is his to run pretty much as he sees fit. Though employers have never had absolute freedom in the conduct of their business, they have generally resisted restrictive regulation, whether by the government or a private group. Even at the present time it is still felt that only exceptional circumstances justify governmental regulation of the average business enterprise. Freedom is believed to be the rule rather than the exception. And, in any case, regulation by the government is likely to be less obnoxious, because more customary, than regulation by a trade-union. The employer looks at the business as *his*; the union readily admits that it is his, but

simultaneously manifests its determination to acquire at least partial control over the enterprise. Employers have characteristically been free to hire and fire employees at will. The union wants to change the *status quo*. The employer should not, says the union, hire whom he will. He should, for example, hire only union men—sometimes only certain union men. The union also seeks partial control over discharge; thus, in a number of instances, it is difficult for an employer to discharge a man who has been employed for the minimum period stipulated in the trade agreement. In many agreements cases of contested discharge must be submitted to arbitration, thus involving expense and delay and making discharge a cumbersome process. The employer may well recognize the extreme importance of the job to the worker and the necessity from the worker's point of view of throwing adequate safeguards around its possession. He is likely to insist, however, that he never discharges a man except for just cause; in any case he resents the fact that he no longer has sole control over discharge.

The union may limit the employer's freedom in still other ways. For example, in the dress industry a series of rigid restrictions has been thrown about the manufacturer-contractor relationship. The manufacturer is not free to change from one contractor to another. If there should be a decline in the volume of business so that the total output could be produced in the manufacturer's own plant, the available work must be shared between the manufacturer's plant and the contractor's. Further, the manufacturer guarantees the contractor's pay roll and must make good the latter's failure to pay. The contractor, in turn, is hemmed in by similar regulations until he virtually loses the status of an independent entrepreneur and becomes in effect an off-the-premises foreman. It may be argued that such rules have been made necessary by the chaotic conditions prevailing in the dress manufacturing industry; this does not, however, make the rules more palatable to the employers.

Cases like these, though perhaps less extreme, might be cited indefinitely: union rules regarding the time and manner of wage payment, the checkoff, and so on. They all lend strength to the point made earlier: while economic opposition to the union is of greatest significance to the employer, any interference with his management of the business rouses his bitter antagonism.

Before proceeding to a detailed discussion of the tactics adopted by employers in their fight against unionism, it would be well to stress the fact that the labor-capital conflict by no means excludes those employers whom we earlier described as friendly to labor. What we meant there was that such employers did not object to unionism *per se* but rather recognized the right of workers to organize and bargain collectively. It is a far cry, however, from recognizing the union to granting such demands as the union might make. The fact that unions and employers are on opposite sides of

the wage bargain creates a divergence of interests which often leads to open conflict. The presence of machinery for arbitration, for instance, is tacit recognition of the existence of differences of opinion though it was devised so that such differences might be settled peacefully. And though the union may get along well with the employer, it is still true that there is a continuing clash of interests typical of market transactions; occasionally the clash may break out into a strike or lockout. This is made sufficiently clear elsewhere in the book; it is mentioned here merely to point out that hostile tactics may be pursued by employers who deal with the union as well as by those who do not. The difference between them is the difference between those who refuse to recognize the union and use every method at their disposal to prevent the union from exercising any power in the industry and those who, recognizing the union, seek to triumph over it in the battles of the market place.

DISCRIMINATING AGAINST UNION MEN

Prior to 1937 it was generally recognized that an employer was legally free to hire and fire whom and when he chose, which meant that he could refuse to hire union members. The Supreme Court decisions in 1937 on the National Labor Relations Act cases have limited the employer's freedom in this respect. He can no longer make nonmembership in labor organizations a condition of hiring or of job tenure. It is difficult to ascertain the precise significance of this new principle. To be sure, many rulings of the National Labor Relations Board have ordered the reinstatement of men held to have been discharged because of their union affiliations or activity, but there still remain large areas of behavior which cannot be reached by the Board and in which, therefore, the employer is able to discriminate against union members. In the first place, it is difficult to prove that a particular man has not been hired because of his union membership. The employer is entirely within his rights in refusing to hire for any other reason (as a matter of fact, he need not give a reason), so that even though the employer's action was caused by his *private* distaste for union men, there can be no recourse against him so long as the actual reason is not made known. Second, a man may be discharged ostensibly for some infraction of shop rules but really because he is active in the union. Innumerable cases of discharge are borderline cases; that is, a worker is dismissed because he has been absent or late or violated a shop rule. If the man involved is active in the union and if the employer is unfriendly to the union, the question arises as to whether the man would have been dismissed if he had not belonged to the union. The policy of the N.L.R.B. thus far has been to give the employer the benefit of the doubt, to say that if there was a plausible reason for dismissal the

fact of union activity is not to be presumed to be the reason; even if the N.L.R.B. were to rule otherwise, it is probable that the courts would find in the employer's favor. In many establishments rules are constantly being violated because in the nature of the work it is difficult to obey them or because they have never been enforced. In such instances the employer has a ready weapon at hand, albeit a weapon which he must use cautiously, lest the real reason for his action become obvious.

There are other ways in which an employer may express his antagonism to trade-unions without running afoul of the law. A "loyal" worker may be given preferred treatment in many ways. Thus he may be given work which receives a higher rate of pay than that given the union members. He may receive favorable treatment in the matter of the shift; his absences and latenesses may not be held against him; he may be promoted rapidly; he may be kept working at full time during slack periods while union members are laid off entirely or get only a few days' work a week. In brief, it may be said that it is still quite possible for an employer to discriminate against union members though he may not do so openly. To the extent that legislation attempts to prohibit the formulation and manifestation of an anti-union policy, it may be successful in accomplishing its purpose. But legislation cannot extend beyond outward conformity to the legal principle; further than this the employer is still free and his hand may fall heavily on the organized worker.

THE LOCKOUT

In their opposition to unions employers frequently resort to the lockout. Thus the employer who wishes to be rid of the union in his plant may announce the cessation of production and may close down the plant pending labor's agreement to return under nonunion conditions; that is, the employer does not really discharge the men but rather suspends production until such time as the workers grant the concession he demands. The lockout is also used by employers who fear that a strike is about to take place; in such cases, the lockout serves to precipitate the struggle prematurely and may catch the union unprepared and greatly lessen its chances for victory. Furthermore, the lockout may be declared after a strike has been called; here its effect is intended to be largely psychological, constituting notice to the workers that the employer is determined to fight to the bitter end. In practice it is very difficult to distinguish between strikes and lockouts; the Bureau of Labor Statistics no longer classes them separately but rather groups them under the heading of "industrial disputes." It is estimated that lockouts are responsible for about 4 per cent of the industrial disputes in the United States.

THE BLACK LIST

What we have just said with reference to antiunion discrimination is further illustrated in the case of the black list. There is scarcely a union official who cannot cite instances in which a black list has been used to the marked disadvantage of the workers concerned. What is a black list? Originally it was actually a list of the names of workers passed around from one employer to another so that a worker who had been marked as a labor agitator or as an active union member could not get a job in the industry. More recently the list has been replaced by other more subtle but equally effective methods. It is said, for example, that many employers' associations keep elaborate card index systems with the names of all workers accused of union activity. When a worker applies for a job in the industry it is a simple matter for the employment manager to call the association and check on the man. If the work involved is skilled, the employee cannot even resort to the subterfuge of changing his name when looking for a job. The use of personal records of continuous employment which recently aroused the maritime workers to strike (they referred to the record as a "fink book") is another illustration. The most obvious opportunity to black-list workers does not require either an actual list or a card index; it is simplicity itself. The worker who applies for a job is asked for references and for previous employers. It is an easy matter for the prospective employer to compare notes with the former employers and to be guided by what he finds. Naturally, the clever employment manager is careful not to let it appear that the man is not hired because of his union affiliation, but the worker who has repeatedly been turned away after his references are checked soon comes to believe that his "bad record" will prevent his re-employment in the industry.

To the worker, especially to the skilled worker, the black list is extremely serious. Not merely does he face, in common with others, the ordinary insecurity of employment, but he encounters an additional obstacle in that he has been singled out for discriminatory treatment. His only alternative is to leave the industry or to move to another part of the country. Many state legislatures have passed laws prohibiting the use of black lists but these have proved impossible to enforce. The existence of a list could seldom be proved and confidential statements made by one employer to another were rarely a matter of record. Here again legal prohibition has proved ineffective.

THE YELLOW-DOG CONTRACT

Typically the yellow-dog contract is an agreement between the employer and the worker by which the latter agrees not to join an independent union.

There are numerous variations on the theme. Thus the worker may agree to join a company union; he may agree not to go out on strike; he may agree not to engage in agitation for a union; he may even agree not to read union literature. The price for this agreement is the job, and the agreement is to last for the duration of the employment.

Though yellow-dog contracts were known in the last several decades of the nineteenth century, they did not come into widespread use until the years following the World War, when they formed an integral part of the "smash the union" policy adopted by many large American corporations. It is interesting to note that at the time of its rapid introduction in the early 1920's the yellow-dog contract was criticized by many employers and even by the League for Industrial Rights (formerly the American Anti-Boycott Association) as a weapon which would surely be a boomerang.

In its early application (prior to the World War) the chief effect of the yellow-dog contract was psychological. Dismissal was in store for the employee who violated his agreement and joined a union or engaged in any of the other activities he had promised to forego; but since he could have been discharged even in the absence of a contract, it is hard to see what benefit the employers hoped to obtain other than the fact that workers who had signed such a contract might feel a greater degree of compulsion to stay away from unions.

The decision in the *Hitchman Coal* case, however, greatly strengthened the legal powers of the employer since he was permitted to get an injunction to restrain the union from organizing workers who had signed a yellow-dog contract. The legal aspects of the yellow-dog contract are treated at length elsewhere in this book; it is sufficient for present purposes to indicate that despite legislation which has either prohibited the contracts altogether or deprived courts of the right to issue injunctions in yellow-dog contract cases, they are still being used. In view of its present legal status, the yellow-dog contract would appear to be a rather unimportant weapon for the employer except in those purely intrastate industries in states which regard the yellow-dog contract as a valid agreement.

INDUSTRIAL ESPIONAGE AND STRIKEBREAKING

Many of the very largest and most respected of our industrial corporations have used labor spies as a regular tactic in their war on unionism, the amounts spent on espionage totaling many millions of dollars annually. In the course of its investigation the La Follette Civil Liberties Committee prepared a partial list of companies using spies; among these companies were some of the largest and wealthiest of American corporations. Banks, trust

companies, insurance companies, breweries, office buildings, construction, can manufacturing, chemicals, cigars and tobacco, cleaning and dyeing, coal and coke, dental supplies, drugs and patent medicines, electrical equipment, food industries, foundries, furniture factories, hospitals, hotels, laundries, lumber, machinery and tools, metal products, paper, steel, petroleum, and printing—indeed, there seems to be no industry in which at least one firm does not feel that espionage is a proper phase of its labor policy.¹

For the four years from 1933 to 1936, millions of dollars were spent for espionage and other expenses connected with strikebreaking.² Even if the expenses attributable solely to a strike were deducted from such figures, the amounts spent for espionage would still be very large. As a matter of fact, it is almost certain that figures obtained by governmental agencies such as the La Follette Committee, represent an absolute minimum, for detective agencies and corporations destroyed their records or "corrected" them, canceled checks were burned, and many people closely associated with the business of espionage conveniently forgot important details.

What is the purpose of such large expenditures? The ostensible reasons are the protection of industry against radicalism, the prevention of sabotage, the detection of theft, the improvement of efficiency, and the betterment of relations between men and management. Actually there is no reason to doubt the common opinion that the aim of espionage is to prevent the formation of unions and, if the unions already exist, to cause their disruption. The following letter written by a detective agency (such agencies may be called "Industrial Engineers," "Industrial Counselors," and so on) is a particularly frank statement of the purposes of industrial espionage:

Dear Sir:

Your letter of July 28 is received. With reference to your inquiry about my experience and what I am prepared to do in case of disturbance, etc.:

First, I will say that if we are employed before any union or organization is formed by the employees, there will be no strike and no disturbance. This does not say that there will be no unions formed, but it does say that we will control the activities of the union and direct its policies, provided we are allowed a free hand by our clients.

Second: If a union is already formed and no strike is on or expected to be declared within 30 to 60 days, although we are not in the same position as we would be in the above case, we could—and I believe with success—carry on an intrigue which would result in factions, disagreements, resignations of officers, and general decrease in the membership; and if a strike were called, we would be in a position to furnish information, etc., of contemplated assaults.

If a strike is already on, I am not so sure of being of much material assistance,

¹ *Violations of Free Speech and Rights of Labor*. Senate Report No. 46. Part 3. 75th Congress. 2d Session. Government Printing Office. Washington, D. C. 1938. Pp. 90-121.

² *Ibid.*, pp. 79-89.

because the bars are up against all newcomers and everyone looks upon you with an eye of suspicion.³

Instances of such frankness are rare, for neither the agency nor the employer hiring the agency likes to state so clearly what it proposes to do. Much more frequently the agency undertakes to "promote harmony" to get the workers "to understand the management," and so on.

The spies themselves may be professionals or they may be recruited from among the company's own employees, who may often be unaware of what they are doing. A worker who is known to need money may be approached by an agent who may pose as a representative of minority stockholders wanting to know what is going on in the plant or even as a representative of the government. When the worker makes his first report and is paid for it, he is trapped and thereafter may be blackmailed into continuing his reports.

Extraordinary precautions are taken to prevent the spy's identity from being discovered. Most of the agencies give their representatives elaborate instructions as to where to live, what to wear, how much to spend, how to prepare their reports, and so on.⁴ It should, of course, be remembered that the spy gets a job in the plant as an ordinary worker and his identity is not known even to the management; this location within the plant offers obvious opportunities to mingle with the other workers and to find out what is going on.

It is the duty of the spy to find out who are members of the union and which workers are talking union, to ascertain whether there is any dissatisfaction in the plant and to report on it immediately. Wherever possible the spy joins the union and becomes one of its most active members, often rising to an office of considerable importance; the La Follette Committee reported that of 1,228 acknowledged industrial spies, 331 were members of unions. It is this situation which has caused one labor man to observe that he never knew of a "gathering large enough to be called a meeting and small enough to exclude a labor spy." From his vantage point within the union, the spy reports on union membership and union finances and on the discussions at union meetings. Since the professional spy is likely to be acquainted with parliamentary procedure, he often obstructs union meetings with "points of order" and claims of "unconstitutionality." Often, too, the spy acts as an *agent provocateur*, appearing as the most radical and loyal member of the union and demanding action which may lead to an

³ *Violations of Free Speech and Assembly and Interference with Rights of Labor*. Hearings . . . on S. Res. 266. 74th Congress. 2d Session. Government Printing Office. Washington, D. C. 1936. P. 71.

⁴ *Interchurch World Movement, Public Opinion and the Steel Strike*. Harcourt, Brace and Company. New York. 1921. P. 56.

ill-timed strike and cause the destruction of the union. Chief among the spy's activities is the promotion of discord and dissension in the union ranks. Whispering campaigns, for example, may be started in order to discredit some faithful union officer. If a strike should materialize, the spy foments back-to-work campaigns by emphasizing the poverty and the suffering of the members and their families, by insisting that the strike is lost, and that the men had better return to their jobs before it is too late.⁵

An interesting illustration of labor espionage is contained in the testimony of Chairman Madden of the National Labor Relations Board before the La Follette Committee in 1936:

In one of the Board's earliest cases it was proved that a Detroit manufacturer had engaged, through the Pinkerton Detective Agency, such a spy. He received the regular pay for the work he pretended to do. The agency received \$175 per month for his real service. He joined the union which was just getting a start in the plant, and his pretense was so effective that he was elected treasurer. He solicited members for the union. He reported to the Pinkerton Agency several times a week concerning the union activities of the men, and the agency reported to the employer, who immediately discharged any of the men who showed any particular union activity. Their discharges, of course, meant that they and their families went on the Government relief rolls, with the ridiculous result that because they exercised their civil liberties they were made paupers and their Government was obliged to maintain them, and the Pinkerton Detective Agency pocketed cash for the accomplishment.

The mystery and deadly certainty with which this scheme operated was so baffling to the men that they each suspected the others, were afraid to meet or to talk, and the union was completely broken.

It was all very dirty business, as the executive of the company indicated when he testified that he carried these reports with his own hands to the furnace of the plant and burned them. But the low point in the whole affair was reached when it appeared that this spy, planted by the company as treasurer of the union, embezzled the union funds and disappeared.⁶

If a strike does break out, the employer often hires professional strike-breakers or guards. Their ostensible function is to protect the employer's property, for which purpose the strikebreakers are occasionally deputized by the local sheriff. If the employer wishes to break the strikers' morale by creating an air of activity in the plant, he may import strikebreakers and start the furnaces going, but scarcely anything more significant than smoke is manufactured. For the professional strikebreaker is not to be confused with the "scab" who takes a job in a "struck" establishment because he needs work; the former's forte is decidedly not work in the ordinary sense of the

⁵ For the demoralizing effects of espionage on workers, see John A. Fitch, *The Steel Workers*. Charities Publication Committee. New York. 1910. P. 214.

⁶ *Violations of Free Speech and Assembly and Interference with Rights of Labor*, loc. cit., p. 2.

term; rather he is a specialist in "strong-arm" work and violence. It is the activities of these guards and strikebreakers, whether permanently employed by the company or engaged merely for the duration of the strike, which are responsible for much of the violence and disturbance of the peace accompanying labor disputes. That such men should terrorize a whole community, assaulting and killing, is scarcely to be wondered at if their "pedigrees" are examined:

Drawn from the underworld, a large number of these men have criminal records. An interesting example is Sam Cohen, alias Sam Goldberg, alias Chowderhead Cohen, alias Charles Harris. . . . His preparatory work in industrial relations included a term in Atlanta for conspiracy, 4 years in state's prison and 4 years in Sing Sing for burglaries, and detention as material witness in a notorious murder case. Out of 13 strikebreakers furnished by Railway Audit & Inspection for the General Motors strike in St. Louis in 1932, seven were wanted by the police of other cities on charges including burglary, forgery, larceny, inciting to riot, and assault. A large proportion of the strikebreakers furnished to the Pioneer Paper Stock Co. of Philadelphia by Mickey Martel, a character known to the police, turned out to have police records. One had been found guilty, among other things, of stealing an automobile, robbery by hold-up, receiving stolen goods, assault and battery, and aggravated assault and battery with intent to kill. Another was arrested for being in possession of narcotics. A third, arrested for attempted larceny, held at the time of his arrest a 6-inch iron pipe wrapped in paper for use in breaking open doors of automobiles.⁷

The character of the professional strikebreakers is further illustrated by the rather comic situation at the time of the building service strike in New York City a few years ago. A large number of strikebreakers was gathered in the office of a strikebreaking agency when the rumor spread that all the men were to be fingerprinted; in the ensuing rush for the stairway, many were seriously trampled upon.

Closely related to strikebreaking is the purchase of munitions by employers. It is said that from 1933 to 1936 over \$450,000 worth of tear gas and nauseating gas was sold to American employers;⁸ a large quantity of machine guns, revolvers, and similar weapons was sold to employers in all parts of the country. It is an interesting commentary on this traffic in arms that employers took a great many pains to conceal the nature of their purchases; the shipments were falsely labeled, the invoices did not describe the merchandise purchased, or intermediaries were used. The fact that some of the munitions purchased by employers seem to have gone to the local police departments indicates that the police department could scarcely be considered an impartial public servant during the strike.

⁷ *Violations of Free Speech and Rights of Labor, loc. cit.*, Part I, p. 9.

⁸ *Ibid.*, p. 12.

Employers are by no means oblivious to the importance of securing a favorable press. Full-page advertisements placed in newspapers throughout the country, suitable arrangements will be made to guarantee the favorable tone of editorials and strike news, prominent commentators in newspapers and magazines may find it profitable to be sympathetic to the employer's side of the argument, advertising firms may be engaged to work up a goodwill campaign. No effort is too great if it helps to prove that the demands of the union are exorbitant and un-American, that the union leaders are Communists acting on instructions from Moscow, that the strike leaders are professional agitators whose only purpose is to collect dues from the workers. Employers may send into the community "missionaries," whose connection with the employer is not revealed; posing as traveling salesmen, they may drop into stores to point out casually how bad the strike is for business and how unfortunate it is that outside agitators are misleading the workers. Or the missionaries may pose as salesmen of household products so that they may have an excuse to visit the workers' homes and try to break their morale through well-calculated remarks about the problematical success of the strike.

Considerable use has been made in recent years of "citizens' committees," "law and order leagues," and so on; these ostensibly independent organizations are in reality closely directed by the company:

Instances have been noted of "citizens' committees" sponsoring "back to work" movements which are, to use the words of an employer association witness, "the new technique in strikebreaking, almost the exclusive method."

Appendages of a "citizens' committee" may include a large fund for publicity and "law and order." Industrialists, great and small, quite remote from the locality, may be contributors. Publicizing of their activities by an employers' national association, assistance from a high-powered, money-raising, and advertising corporation with its "sucker" lists . . . are part and parcel of this new technique to break strikes. Money flows through the "citizens' committee" out to deputies and to tear-gas companies, and to local governmental authorities. Money for advertising may go to newspapers in scores of cities far away. A sample "citizens' committee" had in it so little of "the public" that its own publicity committee never saw its press releases before publication, its treasurer was unknown to its own members, and its major activities, behind a front widely advertised as a manifestation of "the public's" initiative, were known only to a hidden few. Its public statements represented it as a community in revolt against "a noisy minority"; yet before the Senate committee it stood revealed, almost confessedly, as the noisiest, most minor of minorities, though by no means the most powerless. It was very successful in the job it was set up to do; then "records were destroyed because the job was finished."⁹

A FEW ILLUSTRATIONS

Cases before the National Labor Relations Board furnish a bewildering variety of tactics used by employers against unions and ranging all the way

⁹ *Ibid.*, part IV, p. 3.

from simple persuasion to murderous assault. The selections given below are intended to be illustrative of these tactics.

Of the Federal Carton Company, it is said that the company

. . . had through its officials engaged in a campaign to obstruct the rise of a union in the plant, by issuing anti-union statements and threats, by requiring employees to disavow the union as a bargaining agent as a condition of returning to work after a strike in July, 1937, by requiring them to sign individual anti-union contracts . . . and by refusing to bargain with the union which, according to evidence, had a majority in the appropriate unit.¹⁰

A circular distributed to employees of the Ingram Manufacturing Company of Nashville, Tennessee, read in part as follows:

These outside high-pressure organizers are not in town here because they love you. They are only interested in *one thing*. And that is their fees or salaries that will eventually come from the working man's pockets. They will eventually get THEIR payoff, no matter how much it hurts the working man or makes him suffer.

BUT, the important thing is THIS: Do you think our employers will grant the demands of a high-pressure organizer anywhere as quick as he would grant the demands of an independent employee's organization that HONESTLY represents the workers' demands? YOU KNOW THE ANSWER! The Employee's Council will get MORE things done, with more PERMANENT AND LASTING benefits than any outsiders' group that is merely here to make its fees at the working man's expense.

We are all grown-ups and know what we want without any racket of communistic organizers to tell us, and we CAN GET IT, because we are the employees that our boss expects to build his business with. . . .¹¹

Concerning the activities of the Titan Metal Manufacturing Company of Bellefonte, Pennsylvania, the Board said:

The expressed opposition to discredit the Union and denial of the right of its employees to be represented by non-employees; the threats to remove the plant; the interrogation of employees regarding their organizational activities and union affiliation, the solicitation of membership in the Association and the persuading of employees not to join the Union, or to sever their affiliation with it, by the supervisory staff during working hours in the plant, reinforced by threats of retaliatory action and actual discharges; and, the maintenance of the management-controlled Association in the plant—all form a component form of a course of action undertaken by the respondent to frustrate genuine unionization of its employees. . . .¹²

Republic Steel Corporation. Among most prominent recent labor disputes are those revolving around the Republic Steel Corporation which reached a climax in the Memorial Day "massacre" in Chicago. The decision

¹⁰ National Labor Relations Board, *Release*, March 9, 1938.

¹¹ *Release*, March 14, 1938.

¹² *Release*, February 25, 1938.

of the National Labor Relations Board held the company to be guilty of unfair labor practices

. . . through the domination of employee organizations at its Massillon, Canton, Youngstown, Warren, and Cleveland plants; through the discriminatory discharge of 27 workers at these plants; by its shut down of the Canton Tin Plate Mill and the Massillon Works for the purpose of discouraging union organization, and because of its acts of espionage, vilification of the Amalgamated Association of Iron, Steel & Tin Workers and the Steel Workers Organizing Committee, its incitement of violence in order to terrorize union adherents, and by its attempts to turn civil authorities and business interests against the union, through a donation of tear and vomiting gas to the City of Massillon, through support of the Massillon Law and Order League and Back-to-Work committees in three plant cities and through activities in connection with a fatal shooting incident at CIO headquarters at Massillon. . . .

. . . The record shows that ever since the inauguration of the Plan of Employee Representation in June, 1933, the Company had made plain its policy of complete antagonism to the self-organization of the employees and its determination to forestall or destroy any such organization by all means at its command. On July 2, 1936, shortly after the advent of the SWOC, the Company reiterated this basic policy in a public statement, and immediately and ruthlessly put it into effect. Its spies shadowed union organizers; its police attacked and beat them; its superintendent and foremen threatened, laid off and discharged employees for union activities; its officers fostered and supported a whole series of puppet labor organizations which the Company manipulated to oppose the Union; and its president, Tom M. Girdler, publicly vilified the Union's leaders, purposes and policies under circumstances intended to throw the weight of his influence against his employees' efforts at self-organization. . . .

. . . the Board holds, it is plain that the manner and expression of the company's refusal to deal with the SWOC constituted coercion of its employees in their right to self-organization and collective bargaining. The Company on numerous occasions announced, as its reasons for refusing to sign the agreement with the Union, that it favored the Plan¹³ as a successful method of collective bargaining, that it would not tolerate any interference with this successful relationship between management and employees, and that the Union was communistic, corrupt, repressive and irresponsible.

Further, on numerous occasions the Company's superintendents and foremen announced to meetings of employees that, for the same reasons, the Company would never sign any contract with the Union. The Company's position had been announced in such language as the following: "Regardless if every man in here joins a union, we are not going to recognize it. We are not going to sign any contract." "We will shut the mill up and board it up before we will sign with the CIO." These repeated statements, and the unrest created, were a contributing and substantial cause of the strike which occurred on May 25 and 26.¹⁴

Ford Motor Company. For many years Henry Ford has stood as our leading representative of extreme individualism; verbally and in practice he

¹³ This refers to the company union.

¹⁴ *Release*, April 9, 1938.

has expressed himself as strenuously opposed to combinations, and in his labor policy he has consistently refused to deal with trade-unions. The decision of the National Labor Relations Board is a scathing denunciation of Ford's policy toward unions. According to the Board, the Ford Motor Company

. . . has made its antagonism to labor organizations so evident that no employee whose economic life is at its mercy can fail to comprehend it. The full significance of this antagonism has been brought home to its employees through constant hostility of foremen and supervisory officials, through the systematic discharge of union advocates, through the employment . . . of hired thugs to terrorize and beat union members and sympathizers. . . .

The chief weapon of the respondent in this fight to prevent self-organization among its employees has been the Ford Service Department. This Department played the principal role in the savage beatings of May 26, and in the other assaults upon union members. . . . The record leaves no doubt that the Service Department has been vested with the responsibility of maintaining surveillance over Ford employees, not only during their work but even when they are outside the plant, and of crushing at its inception, by force if necessary, any sign of union activity. Thus within the respondent's vast River Rouge plant at Dearborn the freedom of self-organization guaranteed by the Act has been replaced by a rule of terror and repression.

The culmination of Company hostility against union organization . . . occurred during the riots at the gates of the Dearborn plant on May 26. Temporary Ford employees, among them Detroit prize fighters with taped knuckles and others identified as having long police records, were waiting in expectation at the Dearborn plant gates together with regular members of the Ford Service Department. It was public knowledge that the Automobile Workers intended to distribute union leaflets. They had obtained a permit from the City of Dearborn to pass out handbills. Detroit newspaper reporters and photographers were at hand. . . . Mounted police were at the scene. . . .

When the Union group ascended a large overpass across Miller Road at Gate 4 they were told: "This is Ford property. Get the hell off of here." Without making response or objection the group again started walking toward the stairway. They had taken only a few steps when they were attacked. Walter T. Reuther, president of Local No. 174, U.A.W., and Richard T. Frankenstein, Director of the Union's Ford Organizing Committee, were singled out for particular attention. Each was knocked down and viciously kicked. They were raised in the air several times and thrown upon their backs on the concrete. Reuther was kicked down the stairway, beaten and chased down Miller Road. Frankenstein, beaten into insensibility for a few moments, was also kicked down the stairway. . . .

While the beatings on the bridge were taking place a street car arrived at the unloading platform and the women carrying handbills began getting off. A number of men immediately attacked them and, calling them vile names, twisted their arms in an effort to get the leaflets. . . .

. . . the Dearborn mounted policemen who were present made no attempt to intervene and prevent violence.

In the fighting which took place in the vicinity of Gate 4, William Merriweather, one of the Union volunteers, was knocked to the ground . . . Merri-

weather's back was broken during this assault. Dr. E. M. Shafarman testified that Merriweather's injuries may prove to be permanent and that his future earning capacity may be seriously impaired.

Alvin Stickle, another U.A.W. member, was dragged by a Ford Service man into the plant office where Everett Moore, head of the Ford Service Department, told his captors, "Okay, boys," and then stood in the doorway watching while Stickle was given a severe beating.

The news photographers, attempting to film the riot, were shoved about and attacked. . . .

At Gate 5, a block away from Gate 4, where Reuther and Frankenstein were beaten, similar scenes were enacted. Here the girls ran away from danger but several of the men were seriously injured. . . .¹⁵

In its summary of the riot, the Board said:

The careful preparations made for weeks in advance by the respondent to prevent any attempt by the U.A.W. to distribute literature at the plant; the great increase in size of its service department; the presence at the scene of professional fighters and of individuals with known criminal records employed by the respondent; the experienced professional manner in which the attacks were carried out and the brutality with which they were marked; the playing of the most prominent parts in the riot by members of the Service Department and not by production workers; the payment by the respondent of the men who conducted the attacks; and the direct participation of Everett Moore, head of the Service Department,—all lead inescapably to the conclusion that the assaults upon union men and women that occurred on May 26 were part of a carefully designed plan on the part of the respondent to prevent the distribution of union literature by the U.A.W. in the vicinity of the River Rouge plant. . . .

The Ford Service Department . . . has been vastly enlarged since the beginning of the year 1937. Employees seen talking together are taken off the assembly lines by service men and discharged irrespective of the wishes of their foremen. During April [copies of] the Ford Almanac, containing many uncomplimentary references to labor organizations, were placed in the boxes at the gates of the River Rouge plant. In May the Company passed out to its employees cards termed "Fordisms" containing excerpts from various statements of Henry Ford attacking labor organizations. About June 1 there was circulated through its River Rouge plant a "Vote of Confidence" in the policies of Henry Ford. Those refusing to sign the "Vote of Confidence" had their badge numbers taken. The Company then publicized the vote as an endorsement of its labor policies and as a rejection of the U.A.W.¹⁶

Remington Rand and the Mohawk Valley Formula. In the course of its bitter struggle against the union of its employees, Remington Rand, Inc., gave birth to the Mohawk Valley Formula which may be regarded as the latest and most complete set of tactics with which to fight organized labor.

¹⁵ *Release*, December 24, 1937. The release quoted here contains many excerpts from the decision; no effort has been made here to distinguish the language of the decision from that of the release.

¹⁶ *Ibid.*

Before describing the Formula, let us see what the National Labor Relations Board says about the preparations made by the company for the strike:

Even before the strike commenced Rand was preparing to meet it. . . . The events transpiring in the New York offices of the respondent in the week preceding the strike point to the respondent's grim determination not to bargain collectively with its employees but to settle the issues by force. Rand in that week gathered about him a group whose past activities eloquently testify to that resolve. There was Pearl L. Bergoff, who in his testimony described his business as simply that of "strikebreaking" and who said he had been engaged in the business for "over 30 years." Others have styled him "The King of Strikebreakers." There was Captain Robert J. Foster, head of Foster's Industrial & Detective Bureau, which has been operating for 25 years. A third member of this group was Raymond J. Burns, president of the William J. Burns Detective Agency. Later there was added Captain Nathaniel S. Shaw, whose calling card bore the words "Confidential Industrial Missions," and who described himself as a "Radical Investigator" who had been engaged in that work for 27 years. These men are experts in their trade—they brought to Rand all of the many techniques they had developed through years of experience. They know how to operate "propaganda factories" designed to spread demoralizing rumors among striking employees, how to use "missionaries" to visit the homes of these employees and, posing as members of the company's personnel department, persuade them to return to work, how to organize "back to work movements" that would cause an ever widening breach in the ranks of strikers. They appreciate how the devices of the law can be used to advantage and so they know the technique of securing a labor injunction by framed "acts of violence." They understand the aid which State and local police protection can offer in opening a plant so they know how "to get to the Sheriff or the Chief of Police, maybe to the Mayor," or how to bring about "violence" that can be used to support a demand for such protection. When small towns are involved, they are aware of the opportunity offered to divide the community by bringing pressure on the business groups through threats to move the plant elsewhere. Finally, they have at their command the forces necessary for all these purposes—"guards" whose police records are not without significance, undercover men, missionaries, ordinary strikebreakers. All these resources were placed at Rand's disposal. To them he added the invaluable device of a skillful publicity campaign to mould public opinion, as yet unacquainted with the issues involved or the forces at play, against the striking employees. With these men and the techniques and resources they offered, Rand . . . proceeded to evolve the strategy of the respondent in fighting the strike.¹⁷

What were the elements of the strategy? What was the Mohawk Valley Formula? Following is the description by the National Labor Relations Board:

First: When a strike is threatened, label the union leaders as "agitators" to discredit them with the public and their own followers. In the plant, conduct a

¹⁷ *In the Matter of Remington Rand, Inc., and Remington Rand Joint Protective Board of the District Council Office Equipment Workers*, Decision of the National Labor Relations Board, March 13, 1937.

forced balloting under the direction of foremen in an attempt to ascertain the strength of the union and to make possible misrepresentation of the strikers as a small minority imposing their will upon the majority. At the same time, disseminate propaganda, by means of press releases, advertisements and the activities of "missionaries," such propaganda falsely stating the issues involved in the strike so that the strikers appear to be making arbitrary demands, and the real issues, such as the employer's refusal to bargain collectively, are obscured. Concurrently with these moves, by exerting economic pressure through threats to remove the plant, align the influential members of the community into a cohesive group opposed to the strike. Include in this group, usually designated a "Citizens Committee," representatives of the bankers, real estate owners and business men, i.e., those most sensitive to any threat of removal of the plant because of its effect upon property values and purchasing power flowing from payrolls.

Second: When the strike is called raise high the banner of "law and order," thereby causing the community to mass legal and police weapons against a wholly imagined violence and to forget that those of its members who are employees have equal rights with the other members of the community.

Third: Call a "mass meeting" of the citizens to coordinate public sentiment against the strike and to strengthen the power of the Citizens Committee, which organization, thus supported, will both aid the employer in exerting pressure upon the local authorities and itself sponsor vigilante activities.

Fourth: Bring about the formation of a large armed police force to intimidate the strikers and to exert a psychological effect upon the citizens. This force is built by utilizing local police, State Police if the Governor cooperates, vigilantes and special deputies, the deputies being chosen if possible from other neighborhoods, so that there will be no personal relationships to induce sympathy for the strikers. Coach the deputies and vigilantes on the law of unlawful assembly, inciting to riot, disorderly conduct, etc., so that, unhampered by any thought that the strikers may also possess some rights, they will be ready and anxious to use their newly-acquired authority to the limit.

Fifth: And perhaps most important, heighten the demoralizing effect of the above measures—all designed to convince the strikers that their cause is hopeless—by a "back to work" movement, operated by a puppet Association of so-called "loyal employees" secretly organized by the employer. Have this Association wage a publicity campaign in its own name and coordinate such campaign with the work of the "missionaries" circulating among the strikers and visiting their homes. This "back to work" movement has these results: It causes the public to believe that the strikers are in the minority and that most of the employees desire to return to work, thereby winning sympathy for the employer and an indorsement of his activities to such an extent that the public is willing to pay the huge costs, direct and indirect, resulting from the heavy forces of police. This "back to work" movement also enables the employer, when the plant is later opened, to operate it with strikebreakers if necessary and to continue to refuse to bargain collectively with the strikers. In addition, the "back to work" movement permits the employer to keep a constant check on the strength of the union through the number of applications received from employees ready to break ranks and return to work, such number being kept secret from the public and the other employees, so that the doubts and fears created by such secrecy will in turn induce still others to make applications.

Sixth: When a sufficient number of applications are on hand, fix a date for

an opening of the plant through the device of having such opening requested by the "back to work" association. Together with the Citizens Committee, prepare for such opening by making provision for a peak army of police by roping off the areas surrounding the plant, by securing arms and ammunition, etc. The purpose of the "opening" of the plant is threefold: to see if enough employees are ready to return to work; to induce still others to return as a result of the demoralizing effect produced by the opening of the plant and the return of some of their number; and lastly, even if the manoeuvre fails to induce a sufficient number of persons to return, to persuade the public through pictures and news releases that the opening was nevertheless successful.

Seventh: Stage the "opening," theatrically throwing open the gates at the propitious moment and having the employees march into the plant grounds in a massed group protected by squads of armed police, so as to give to the opening a dramatic and exaggerated quality and thus heighten its demoralizing effect. Along with the "opening" provide a spectacle—speeches, flag raising, and praises for the employees, citizens and local authorities, so that, their vanity touched, they will feel responsible for the continued success of the scheme and will increase their efforts to induce additional employees to return to work.

Eighth: Capitalize on the demoralization of the strikers by continuing the show of police force and the pressure of the Citizens Committee, both to insure that those employees who have returned will continue at work and to force the remaining strikers to capitulate. If necessary, turn the locality into a warlike camp through the declaration of a state of emergency tantamount to martial law and barricade it from the outside world so that nothing may interfere with the successful conclusion of the "Formula," thereby driving home to the union leaders the futility of further efforts to hold their ranks intact.

Close the publicity barrage, which day by day during the entire period has increased the demoralization worked by all of these measures, on the theme that the plant is in full operation and that the strikers were merely a minority attempting to interfere with the "right to work," thus inducing the public to place a moral stamp of approval upon the above measures. With this, the campaign is over—the employer has broken the strike.¹⁸

This is the modern technique of fighting the union. While other contests may be waged on a less ambitious scale, the general principle is the same: discredit the union in every possible way, attack it on all fronts, and sway public opinion to the side of the employer. Such tactics, combined with the lockout, the black list, the yellow-dog contract, and espionage, make the employer's armory truly an imposing one.

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QUESTIONS

1. Under what circumstances do employers favor unions?
2. Discuss the reasons for the general hostility of employers toward trade-unions.
3. Discuss the effects of the National Labor Relations Act on antiunion discrimination.
4. What is a lockout? Under what circumstances is it used?
5. Define black list. How is it used? What is its effect?
6. What is a yellow-dog contract? What purpose does it serve?
7. Discuss the use of industrial spies in the United States.
8. For what reasons do employers use strikebreakers?
9. What are the major features of the Mohawk Valley Formula?
10. Draw up a list of the various tactics with which employers fight unions.

OPPOSITION of American employers to trade-unions has not blinded many of them to the fact that there is a real need for an effective medium through which employer and employee could exchange their ideas. The tremendous growth in the size of the business unit has meant that grievances and complaints cannot now be adjusted as effectively as in the days when industry was small, and unsettled grievances and complaints have a way of festering until major surgery is required. This is one of the chief reasons for the establishment of company unions. Another important contributing cause has been employers' realization that a refusal to deal with unions requires some substitute which would be acceptable to the men; the company union presented itself as a unique device to "fight fire with fire."

COMPANY UNIONS

The term "company union" is applied to "organizations confined to workers of a particular company or plant, which has for its purpose the consideration of conditions of employment."¹ Many other designations have been given to such organizations; among them are employee-representation plans, employee associations, joint conferences, works councils, industrial democracy, joint conference committees, industrial councils, co-operative associations, and shop committees—the particular title used is quite unim-

¹ United States Bureau of Labor Statistics. *Characteristics of Company Unions, 1935*. Government Printing Office. Washington, D. C. 1938. P. 1. Hereafter cited as B.L.S. *Company Unions, 1935*.

portant compared to the fact that none but employees of the company may join.

The company union is distinctly a "war baby," the first great impetus in this direction coming, oddly enough, from the various labor boards established during the World War by the federal government. Prior to the War there were only a very few such organizations in the United States. Of these, the plans in the Filene department store in Boston and in the mines and mills of the Colorado Fuel & Iron Company are probably the best known. The Filene Co-operative Association developed in 1898 out of informal meetings between the proprietor and his employees; in 1903 a constitution and bylaws were acquired and the career of the Association was fully launched. All employees are members of the Association, which has considerable power over store discipline and working conditions, including the power to override a management veto. An arbitration board of twelve employees, chosen by the employees, has final jurisdiction over disputes including wages, working conditions, and discharges. Apparently the company had no objections to independent union affiliation; on the contrary, it did employ union men and observe union conditions in certain departments.

The plan of the Colorado Fuel & Iron Company came as a result of the bloody warfare which characterized the miners' strike in 1913-14. It provided for district joint conferences of an equal number of employee and management representatives to discuss working conditions, and for joint standing district committees on wages, safety, sanitation, and recreation. Disputes were to be adjusted by the standing committee if possible; otherwise outside arbitrators were to be called in.

Among the other early plans were those of the American Rolling Mill Company, of the Nernst Lamp Company of Pittsburgh, and of the Nelson Valve Company of Philadelphia. An interesting suggestion concerning the type of company union was that advanced by John Leitch, who gave his product the appealing name "industrial democracy." This plan provided for government within the establishment patterned after the government of the United States. The chief executives, headed by the president of the corporation, were to constitute the cabinet; the minor officials, such as foremen and department managers, were to be the senate; the house of representatives was to be chosen by the workers. Proposals to become effective had to pass both houses and be approved by the cabinet. To its founder industrial democracy meant "hitching up of labor and capital. It is removing the great power of *coöperation* from the field of fancy to that of actual accomplished fact. The several departments of the business function as before; no powers are withdrawn; only remedies are set up for the abuse of power."² Among the

² John Leitch, *Man to Man: The Story of Industrial Democracy*. B. C. Forbes Publishing Company. New York. 1919. P. 202.

results claimed from the establishment of industrial democracy were increases in production, decreases in the cost of production, decreases in labor turnover, greater goodwill throughout the community, and immunity from strikes and other labor troubles. Of perhaps greater appeal to workers covered by such plans was the dividend which depended upon reductions in the cost of production; this was one of the cornerstones in Leitch's plan. Despite these inducements, industrial democracy plans never gained any very great favor with employers; they were very expensive to operate and in practice proved quite cumbersome; it was also readily apparent that these plans did not represent the panacea for all industrial ills. Hence, after the first few years, industrial democracy plans disappeared almost completely.

During the War, the necessity for effective mobilization of the nation's industrial resources caused the various war labor boards to order the establishment of shop committees as a means of settling the innumerable grievances and disputes which were hampering production. In October, 1917, the Shipbuilding Labor Adjustment Board ordered the formation of shop committees in the shipyards of the Portland district; by March, 1918, shop committees were established in the South Atlantic and the Gulf yards, and soon afterwards in the North Atlantic and Great Lakes districts. On October 24, 1918, the Board authorized the use of the shop committees in all shipyards whose owners did not have agreements with trade-unions.³

The United States Railroad Administration, in devising machinery for the speedy adjustment of disputes, provided for the formation of local shop committees, four departmental boards of adjustment with joint membership of representatives of labor and of capital, and a General Board of Railway Wages and Working Conditions. The United States Fuel Administration, in May, 1918, arranged an agreement between the miners and the operators of Maryland and the Upper Potomac region which provided for the creation of shop committees; this principle was later extended to the whole industry by agreement between the Fuel Administrator and the United Mine Workers' union.

Under the plans of the three governmental agencies just mentioned, the shop committee was intended solely for the settlement of disputes. The shop committees sponsored by the National War Labor Board, however, were designed not merely for this purpose but as "a fully developed plan of collective dealing for the employees of the entire plant."⁴ Wherever possible, the War Labor Board furthered the company union idea as a medium of collective bargaining, though, of course, in cases where an independent trade-union was in existence it was not disturbed.⁵

³ Carroll E. French, *The Shop Committee in the United States*. Johns Hopkins University Studies. Series XLI, No. 2. Baltimore. 1923. Chap. 1.

⁴ *Ibid.*, p. 21.

⁵ *Ibid.*, p. 25.

Employers were by no means enthusiastic about these shop committees. Many viewed the shop committees with a great deal of hostility. It should be remarked that the American Federation of Labor regarded shop committees in hitherto unorganized plants as a promising step in the direction of independent organization. After the War, however, employers began to espouse company unions enthusiastically. Two factors chiefly accounted for this changed attitude: (1) the company union was a strategic weapon in the general offensive launched by employers against organized labor; (2) the developing personnel movement urged some form of employee representation as a necessary element in an intelligent labor policy. The decade following the War, then, was marked by an increase in the coverage of company union plans, a development which organized labor bitterly opposed. From the available data it appears that in 1919, 403,765 workers were covered by company union plans; in 1922, 690,000; in 1924, 1,240,704; in 1926, 1,369,078; and in 1928, 1,547,766. The number of plans did not change perceptibly during this period; there were 145 plans in 1919; 385 in 1922; 421 in 1924; 432 in 1926; and 399 in 1928.⁶ This situation is explained by the fact that many of the plans started by smaller companies were soon dropped. "Both in absolute number and in percentage the number of plans in companies with less than 800 workers greatly diminished, while those with more than 800 increased. As to number of workers in establishments of various sizes, the percentage of the total in establishments of less than 5,000 declined, while those above 5,000 grew. Among the very largest concerns with over 15,000 workers, the percentage representation to the total grew from 48.6 to 63.1."⁷

With the coming of the depression in 1929 there was a decided shrinkage in the number of such plans and a somewhat smaller percentage shrinkage in the coverage. In 1932 there were 313 plans compared to the 399 in 1928, to which decline should be added the 29 plans formed between 1930 and 1932; only 1,263,194 workers were covered in 1932 compared to 1,547,766 in 1928. To these declines, the falling off of business which caused plants to shut down, the waning power of independent unions, and the reduction in the scope of personnel work were contributing factors.⁸

The picture was drastically changed with the inauguration of President Roosevelt in 1933. The emphasis placed by the National Industrial Recovery Act on the right of workers to bargain collectively led not merely to an enormous growth in the membership of independent trade-unions but also in the number and coverage of company unions; of 593 company union plans studied by the Bureau of Labor Statistics, 378, or 63.8 per cent of the total, were established from 1933 to 1935.⁹ In 1935, on the basis of the data collected

⁶ B.L.S., *Company Unions*, 1935, Chap. 2.

⁷ *Ibid.*, p. 25.

⁸ *Ibid.*, pp. 26-27.

⁹ *Ibid.*, p. 51.

by the National Industrial Conference Board, the Twentieth Century Fund, Inc., estimated that about 2,500,000 workers were covered by company unions.¹⁰

Still another phase in the history of company unionism came about as a result of the decisions, in 1937, of the United States Supreme Court, which upheld the constitutionality of the National Labor Relations Act. The legal prohibitions on company domination of, and interference in, company unions meant that many of the plans would have to be changed substantially; this development will be described later in the chapter.

Surveying the history of company unions for the past forty years or so, we note that they had a slow development up to the World War, experienced a sharp increase during the War, continued their growth during the following decade as a part of the personnel movement, declined perceptibly during the depression, had a mushroom growth during the N.R.A. period, and probably suffered a permanent decline as a result of the National Labor Relations Act.

Types of company unions. Besides the industrial democracy plans which, as we have said, have virtually disappeared, there have been four major types of company unions in the United States. First, there is the *employee committee* type, consisting of a committee of representatives chosen by the workers. The committee meets independently of the management and discusses grievances and complaints of the plant employees. "A majority vote of the representatives is deemed to represent the opinions of the rank and file. The decisions arrived at by employee committees are not final but are taken up with the appropriate executive officer of the company who may or may not accept them. Arbitration is rarely provided. As originally established, employee committees, therefore, were primarily advisory bodies suggesting to management how it should proceed with matters pertaining to working conditions."¹¹

The *joint committee* type of company union is exemplified by the plan of the Colorado Fuel & Iron Company described above. Such unions almost invariably provide for a committee composed of an equal number of representatives of men and of management. "Most of the earlier plans were introduced to bring about a closer and more harmonious relationship between men and management, or to forestall independent organization of workers through trade unions. Few were established for collective bargaining. In many cases employers were afraid to permit separate meetings of employee committees. Under joint committees, not only do employees and management meet together but they have also equal voting power. Some joint committees permit each representative to cast an individual vote. In such cases a majority vote—usually specified as two-thirds or three-quarters of all votes cast—carries. Other

¹⁰ *Labor and the Government*. McGraw-Hill Book Company. New York. 1935. P. 79.

¹¹ *Ibid.*, p. 70.

plans stipulate unit voting. Under these, no matters are decided upon except when the majority of both groups approve. The decisions of joint committees are final in only a small percentage of the plans."¹² Where arbitration machinery is provided, the decision of the arbitrator is final and binding.

A combination of the employee committee and the joint committee has occasionally been set up through the establishment of an employee's committee which after its own deliberations meets in joint committee with representatives of the employers. "Combination forms may call for sub-committees of elected representatives of workers, with a central committee composed of a joint membership. Some plans in this category may have the latter body as a permanent part of their structure; others provide that the employee committees may become joint committees by the addition of management representatives when the occasion demands. In some instances, provision is made for alternate meetings of employee representatives alone and for joint meetings of employee representatives and management."¹³

It is obvious that neither the employee committee nor the joint committee, nor any combination of the two, creates that independence of the workers which is a necessary accompaniment of collective bargaining. There is certainly no collective bargaining if the employee committee acts merely as an advisory body to the management, which has the power to accept or reject suggestions at will. Effective collective bargaining requires that the parties to the bargain meet on as nearly equal terms as possible, and not that one party to the bargain should act as an administrative aide to the other. As far as the joint committee is concerned, it is clear that the very presence of management representatives serves to intimidate the employee members and prevent them from fulfilling their function as bargainers.

Closest in appearance to the ordinary trade-union is the *employee association* type of company union. This is a regular organization with officers, a constitution, bylaws, and, occasionally, a treasury. The structure of a company union is not especially significant in itself; much more important is the question of what such a union does for its members. The answer to this question may be better understood if we examine first certain other matters such as how company unions are started and how they are financed.

The formation of company unions. We may take it for granted that company unions are always established with the consent, if not at the desire, of the management. While there appear to have been occasional instances in which a group of workers, wishing to bargain collectively and yet refusing affiliation with an independent labor organization, have approached management on the subject of establishing a company union, for the most part the

¹² *Ibid.*, p. 71.

¹³ *Ibid.*, p. 72.

company union idea starts with management, and it is management's active efforts which bring about the formation of the company union. Sometimes the personnel department prepares a constitution and bylaws even before the organization is formed; sometimes management prompts the circulation of a petition among the workers requesting management to establish a company union; sometimes such a petition proposes a mass meeting in which the question of organization may be discussed; sometimes the management calls the mass meeting without bothering with the formality of a preliminary petition signed by a respectable proportion of the workers. In a number of instances foremen and minor executives are asked to "talk up" the company union when it is in the process of formation, and they are even provided with a battery of arguments to turn on those who waver. The meetings are typically called on company time and all the expenses incidental to holding the meeting are borne by the company. Typically, too, the meeting is addressed by the president or some other major executive of the company who holds forth on the virtues of company unionism, the vices of independent unionism, or both. In rare instances interviews between workers and executives are used in an effort to work up some enthusiasm for the company union idea. Interestingly enough, even after all the plans for the union are drawn up, the employees are often not asked to approve or reject them. Out of one hundred and twenty-six company union plans, according to the Bureau of Labor Statistics, there was no direct employee expression on acceptance in thirty-four instances; in fourteen the plan was accepted by acclamation and in twenty-five by signature to a membership roll or petition; only in thirty-five instances was the vote a secret one.¹⁴ It is well known, of course, that coercion may be practiced even where a secret ballot is used; for example, the employer may announce that in the event of an adverse vote he will shut down the plant or will move it to another community. The voters may fear, too, that the ballots are not really secret. How much more coercive, then, must be the circulation of a petition or membership roll! Startlingly enough, of the thirty-five instances of the use of a secret ballot, five resulted in a vote of rejection of the union, but the company put the plan into effect just the same. This determination to have the company union at all costs may be explained by noting the influences leading immediately to their formation; in more than two-fifths of the plans studied by the Bureau of Labor Statistics, the dominant factor was the existence of a trade-union which was making headway in the plant or the locality; in nearly a quarter of the plans, the major stimulus came from the passage of the National Industrial Recovery Act; a fifth could be attributed to strikes in progress or recently ended. In only 11 per cent of the cases was the predominant motive the desire to improve personnel relations.¹⁵

¹⁴ B.L.S., *Company Unions*, 1935, p. 93.

¹⁵ *Ibid.*, p. 81.

Financing the company union. Union strength is measured, in large part, by the size of the union's treasury or war chest. A union without funds is not merely unable to undertake the financing of a drawn-out and expensive strike, it is also unable to meet ordinary running expenses. Its primary need, therefore, is funds, and to raise them dues and assessments may be levied, benefit parties organized, and so on. In company unions, on the other hand, it used to be the exceptional union which charged its members dues. As a matter of fact, one of the major arguments for the company union and against the independent union was that the latter required the payment of dues while the former did not. Even where dues were collected, they were frequently spent on such matters as paying clerical expenses incidental to operation of the union, payment of officers for time spent on union work, and so on, but they were most often used to defray the cost of various welfare activities such as group insurance. In the overwhelming number of cases the whole burden of paying the cost of the company union was cheerfully borne by the management; it must have made substantial contributions toward other expenses as well for monthly dues seldom exceed eighty cents, and in many cases were only twenty-five. Besides direct cash contributions, the employer might furnish the union with offices and stenographic and clerical assistance. He might pay the costs of printing and distributing company union literature, and pay the union officers for the time spent on union business.

The National Labor Relations Act has undoubtedly caused important changes in the practices of company unions regarding dues. By forbidding employers to contribute to the support of unions, the Act has compelled unions to look to their own members for support. Despite this it appears that dues in company unions are almost invariably lower than the dues in independent unions.

The functioning of company unions. If the union is of the employee-association type, its meetings are usually monthly affairs, though they may be held more frequently or may be held only at irregular intervals. Employee representatives ordinarily meet about once a month. The usual procedure for the handling of grievances requires that the worker first take the matter up with the foreman; if no settlement is reached, he may take it up with his employee representative. Occasionally the stipulated procedure requires the worker to appeal all the way up to the administrative hierarchy before he resorts to the union.

Grievances and complaints appear to be the favorite topic at company union meetings, followed in order of frequency by such subjects as health and safety, general wage increases or decreases, wage rates for specific occupations, changes in weekly or daily hours, general rules and regulations, methods of

sharing or rotating work, discharge of an employee or employees, rules of seniority, and type of wage payment.

The fact that these matters are discussed by company unions does not mean, however, that the company union is therefore an effective device for representing the interests of the workers. Where the employer dominates the union—and there are few company unions which are not employer-dominated—successes gained by the union are successes which the company has wanted the union to gain. Not infrequently an employer will announce triumphantly that the company union in his plant has won 70, 80, or even 90 per cent of its demands. Such statements should be regarded very suspiciously, for, since these demands are won from the employer, it is surprising to find one party to a bargain boasting of the triumphs of his adversary. The real purpose of such statements is to create the impression that the company union is a very effective bargaining device. To further this impression, wage increases or other concessions which would be granted anyway are given to the company union shortly after its formation. Typically the company union leaders are called in and informed that workers will be given a week's vacation with pay, for example, which is subsequently publicized as an important victory for the union. By and large, company unions are not particularly successful in general wages and hours questions. The officers of the union and the employee representatives are, it should be remembered, employees of the company; they therefore lack that spirit of independence which is essential to free bargaining between equals. The constitution of the union and the agreement with the employer may guarantee the union representatives against any discrimination for their efforts in behalf of the employees but it is a guarantee which in practice is regarded with suspicion. The atmosphere in which negotiations concerning wages and hours are usually carried on is illustrated by the two following selections from the Bureau of Labor Statistics' study on company unions. The first is a letter issued by the president of a company:

We have been requested by the executive committee of the ——— Employees' Association to make an upward adjustment of wages.

Although the volume of business and financial income of the company does not justify higher wages at this time, we wish to show our appreciation of the spirit which prompted our employees to form this company association, and take pleasure in announcing that a 10 per cent increase in wages will be given to all ——— employees January 15. . . .¹⁶

Another wage situation is described by management: "Recently the men asked what amounted to a 40 per cent raise. We took the request to the executive vice president. He was disgusted. He answered it in writing *and that was all to that.*"¹⁷ The Bureau reports that in eighteen out of twenty-two cases in

¹⁶ *Ibid.*, p. 174.

¹⁷ *Ibid.* Italics not in original.

which wage increases were refused there were no negotiations. "The company union made a request for an increase. The company responded in writing or orally, refusing to grant the increase on the ground that business was bad, or the company could not afford it, or rates paid were already equal to or above the prevailing level. That ended the matter."¹⁸ It is obvious that there can be no collective bargain where there is no negotiation, and this is precisely the situation when the union regards its function as merely advisory, where requests of the men are considered by management, with the decision of management final. What can the company union do? It has no funds, no trade-union philosophy, no friendly associations with the trade-union movement outside, no expert guidance and advice, and no experience. Completely dominated by management, the company union thus becomes a very poor imitation of a labor organization, reminding one of Mr. Dooley's description of the way in which open-shop employers would like to have unions conducted: "No strikes, no rules, no contracts, no scales, hardly iny wages, an' dam' few mimbers."

Much more success seems to have been achieved by company unions in the settlement of grievances and complaints. It is even said that the very establishment of machinery for the adjustment of complaints has had the effect of lessening their number. There is no doubt that complaints and grievances may cause serious trouble in the plant and that some system must be developed for dealing with them. In the organized shops the shop chairman, who is the union representative, or the shop steward will undertake to make the adjustment; where there is no outside union, the work of handling disputes is undoubtedly the most important phase of the work of company unions. From this standpoint company unionism is to be regarded as an important device of management for the more effective and more harmonious operation of the plant.

It should not be supposed that all company unions are dominated by management or that company unions may not engage in legitimate collective bargaining. But even under these circumstances company unions would seem to lack the strength necessary for effective action: (1) Their membership seldom extends beyond the employees of one company or one plant. (2) They are spiritually isolated.¹⁹ (3) They have no funds. (4) They seldom possess the experience and the leadership necessary to win a strike. The strike, in the last analysis, represents labor's most powerful weapon—unions which cannot strike are, in the absence of unusual compensatory factors such as political power, weak indeed.

¹⁸ *Ibid.*

¹⁹ The Twentieth Century Fund, Inc., says on this point: "The company-union movement has not developed spokesmen, leaders or a group consciousness on the part of the employees, although its aims and ideals have been ably expounded by employers and by some students of personnel relations." *Labor and the Government*, op. cit., p. 67.

Company unionism and the National Labor Relations Act. Numerous orders of the National Labor Relations Board have instructed companies to disestablish company unions, to cease financial contributions, to desist from influencing workers to join the company union, not to hold meetings on company time, and so on. As a consequence, many of the unions have undergone a considerable transformation, though in numerous instances this was largely external. The major changes which seem to have taken place are those providing (1) for dues payment; (2) that no meetings shall be held on company time or company property; (3) that membership in the union shall be voluntary; and (4) that there shall be written agreements with the employer. But where there is no change in the personnel or in the underlying philosophy it is scarcely likely that the readapted or independent unions will be substantially different from the company unions. In some instances all that seems to have happened is that the company union has taken on a new name and made a few changes in its constitution and bylaws. Yet the effects of the National Labor Relations Act on company unions are likely to be cumulative in nature. Over a period of years it is highly probable that company unions, deprived of management's initiative and financial support, will atrophy and be replaced, if at all, by independent unions.

EMPLOYERS' ASSOCIATIONS

Our discussion of management's labor policies would not be complete without a description of the work of employers' associations which are taking a more and more prominent place in the struggles between labor and capital. An employers' association has been defined as "a group which is composed of or fostered and controlled by employers and seeks to promote the employers' interests in labor matters."²⁰ In the United States the dividing line between employers' associations and other associations of businessmen is often obscure. Trade associations which have as their chief function the furtherance of the interests of their members may in pursuance of this purpose promote a particular labor policy. Chambers of commerce, for example, may devote themselves to labor as well as to other economic questions. Hence, in analyzing the work of employers' associations we have to consider, too, the tactics and policies of organizations like the chambers of commerce which often play a vital part in labor disputes.

The associations may be classified in various ways. From the standpoint of jurisdiction, they may be associations with members in only one trade as, for example, the Association of Master Painters and Decorators, or in one industry as the Employing Printers' League, or they may have a general

²⁰ Clarence E. Bonnett, "Employers' Associations," *Encyclopaedia of the Social Sciences*, V, 509.

jurisdiction as the Associated Employers of Indianapolis. The associations may also be classed as formal (if they have a constitution, bylaws, and a permanent administrative organization) or informal. Another very common method of classification divides them into geographical groups: local associations like the Associated Employers of Indianapolis; state associations like the Pennsylvania Manufacturers' Association; district associations like the district committees of the National Stove Founders' Defense Association; and national associations like the National Association of Manufacturers or the National Metal Trades Association which, however, is not truly national since it accepts no members west of the Mississippi River or south of Mason and Dixon's line.

By far the most useful classification is that which is functional in nature and assorts associations according to their attitudes and policies toward organized labor. Those associations which undertake to negotiate with trade-unions are called *negotiatory* associations, while those which fight and refuse to recognize trade-unions are called *belligerent* associations. The same general idea is involved in the use of the terms "mediatory" to describe associations which deal with unions and "militant" to describe those which oppose unions. Between these two stands an organization like the United Typothetae whose membership includes printers with closed union shops and printers with anti-union shops.

Up to about the turn of the century most of the employers' associations in the United States were of the negotiatory type; it is instructive to notice that the National Metal Trades Association, one of the most bitterly antiunion associations in the country, started its career as a negotiatory organization. It is the practice of the negotiatory associations to make agreements for their members, the agreements being local, district, or national in scope. There are obvious advantages in this sort of collective bargaining by the employer; to the union it means an enormous saving in the time involved in negotiating agreements. In place of tedious negotiations which have to be repeated with each employer there is merely one process which serves for all employers alike; uniform conditions are established at once in all shops covered by the association's members. It is for this reason that a powerful union is likely to insist that employers join the employers' association. At the present time, the American Newspaper Publishers' Association is one of the outstanding negotiatory associations in the United States. This organization has had for many years a national arbitration agreement with the pressmen's union under which many hundreds of disputes have been amicably settled. In the same industry local employers' associations negotiate wage scales for their members; for example, the Boston Newspaper Publishers' Association will deal with the various unions in Boston for all the newspapers which are members of the Association.

Negotiatory associations seem to flourish only in those industries in which a high degree of labor organization has been maintained, where the workers are highly skilled, and where the individual plant has not grown to enormous proportions.²¹ For in highly competitive industries a collective agreement between all the employers and the union has, from the employer's standpoint, the not inconsiderable virtue of assuring uniform labor conditions and hence uniform labor costs; the employer has at least the satisfaction of knowing that he is not paying more for labor than his competitor is.

With the growth of large-scale production, the lessening of competition, and the growth in the size of the individual business unit comes hostility to the unions even in those industries where formerly friendly relations existed between union and employers' association. The increasing mechanization of industry, organized labor's hostility to the introduction of the machine, to scientific management, and so on, induced associations to cease dealing with organized labor. In this way some of our most belligerent associations got their start; many others were hostile to labor from their very inception.

The objectives of belligerent associations may be seen in the following statement by a president of the National Association of Manufacturers concerning the principles of that organization: "No boycott, no closed shop, no sympathetic strike, no limitation of output, no compulsory use of the union label, no sacrifice of the independent workmen to the union," and no restrictions as to apprenticeship or to use of machinery.²² And the principles of the National Metal Trades Association are illustrated in the rules which governed the relations of members of the Association toward their employees: "*Concerning Employees.* Since we, as employers, are responsible for the work turned out by our workmen, we must have full discretion to designate the men we consider competent . . . and to determine the conditions under which . . . work shall be prosecuted, the question of the competency of the men being determined solely by us. . . ." ²³ Another rule expressed the Associations' condemnation of strikes and lockouts.²⁴ Other sections affirmed the freedom of the worker to quit, and of the employer to discharge, at any time; denied the right of workers to place any restrictions on management, methods, or production of the shops; left to the employer the sole determination of the number of apprentices and helpers, as well as the choice of the wage system to be used, and so on.

Functions of belligerent associations. In their campaigns against trade-unions, employers' associations perform a variety of services for their mem-

²¹ Twentieth Century Fund, Inc., *Labor and the Government*, op. cit., pp. 54-55.

²² Clarence E. Bonnett, *Employers' Associations in the United States*. The Macmillan Company, New York, 1922. P. 299.

²³ *Ibid.*, p. 101.

²⁴ *Ibid.*, p. 102.

bers. First, the association may maintain a black list which helps its members to refrain from hiring "agitators" and "troublemakers." Second, many of the associations maintain a spy service. In his testimony before the La Follette Committee, Homer D. Sayre of the National Metal Trades Association, admitted that his organization employed undercover men who were sent to members' plants at their request.²⁵ It is quite probable that the total number of spies hired by employers' associations falls far below that hired by detective agencies directly for industry, but the number appears nevertheless to be considerable. Third, it is a function of many of the associations to supply "guards" to members in times of strike; the work of these "guards" we have already referred to; they are in reality nothing more than "strong-arm" men whose chief function is to cow the strikers into submission.

Many employers' associations also serve as active recruiting agencies for strikebreakers, helping the employer replace his striking workers with a minimum of difficulty. Besides this the whole conduct of the strike may be placed in the hands of a representative of the association, thoroughly schooled in the arts of combating organized labor. War chests, equivalent to those maintained by trade-unions, furnish the sinews of war. Through the efforts of the association, financial assistance may be given to the employer to help him withstand the pressure caused by the strike. Banks may be induced to refund interest on loans or to extend and renew old loans; unfilled orders may be filled by other members of the association and the profit on these orders given to the "struck" employer.

The strengthened legal position of trade-unions in recent years has scarcely abated the hostility of employers' associations, but it has caused a change in tactics. Some employers' associations have undertaken to act as employers' representatives in dealing with unions, with the apparent purpose of avoiding recognition wherever possible. In a bulletin sent to members of the Associated Industries of Cleveland in 1933, we find the following:

Conditions may arise in your business that will necessitate entering into an agreement with a union acting on behalf of certain of your employees. Should you be asked to take such a step we most certainly urge you to consult with this office concerning your rights before carrying on even a preliminary conversation with union representatives. We cannot place too much emphasis upon the necessity for such action. A number of cases have already come to our attention in which employers, uncertain of their rights, have been misled [*sic*] or coerced into signing agreements under which the maintenance of an open shop will be extremely difficult. Lack of sufficient information and often groundless fear of strikes have led some employers to make costly mistakes that might easily have been avoided. So, we again suggest—if you are approached by anyone who claims to represent your employees, consult this office at once, BEFORE, AND NOT AFTER, YOU DISCUSS THE MAT-

²⁵ *Violations of Free Speech and Rights of Labor. Hearings . . . S.Res.266. 76th Cong. 1st Sess. Government Printing Office. Washington, D. C. 1937. P. 822.*

TER WITH SUCH PERSONS. Remember, that *you*, also, have a right to deal thru representatives of your own choosing.²⁶

Great emphasis has been placed by belligerent employers' associations on the use of propaganda in fighting the unions. They address themselves to converting their own workers and the community generally to the virtues of the open shop. The Handbook of the American Plan—Open Shop Conference, for example, has sections entitled "How to Keep an Open Shop Community 'Open,'" "Converting a Closed Shop Neighboring Town," and "Putting Your Community into the Open Shop Ranks."²⁷ The National Association of Manufacturers has a most elaborate propaganda machine which directs its attention to labor problems among other topics. It supplies bulletins and daily comic features to daily newspapers; it supplies press releases and clippings to weekly and business papers; it engages in newspaper and billboard advertising; it sponsors radio programs, supplies speakers and motion pictures, and conducts a direct mail program.²⁸

In addition to the activities mentioned above, employers' associations may undertake the prosecution of union leaders for the violation of injunctions and for boycotting; one of the bitterest antiunion associations, the League for Industrial Rights, began its career as the American Anti-Boycott Association and its leading spirits were active in the Danbury Hatters' case. Attempts are often made to influence legislation, either through the maintenance of a lobby or through getting members to write to legislators, and the like. Attacks are launched on the union label and on the closed shop, and the conferences sponsored by the association serve as forums for antiunion propaganda. Several of the leading associations have also been active in sponsoring company unions and in urging their members to embark on welfare programs as an antiunion device. Union leaders may be won over by bribes and promotions, and unions discredited through publicity given to cases of violence and corruption in trade-union circles. Candidates for public office may be actively supported or opposed, depending on their attitude toward organized labor. Summing up the work of belligerent associations, we may say that they conduct an unrelenting campaign against trade-unions and against the closed shop, the strike, the picket, the boycott, union rules, and union participation in management. To the extent that the association represents the collective strength of industry, the increasing tendency for associations to function actively in strike situations means that labor's task is becoming ever more formidable.

²⁶ *Labor Policies of Employers' Associations. Part II. The Associated Industries of Cleveland.* 76th Congress. 1st Session. Senate Report No. 6. Part 5. Government Printing Office. Washington, D. C. 1939. Pp. 114-15.

²⁷ *Ibid.*, pp. 202-17.

²⁸ *Ibid.*, Part III. *The National Association of Manufacturers.* 76th Congress. 1st Session. Senate Report No. 6. Part 6. Government Printing Office. Washington, D. C. 1939. Pp. 160-61.

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QUESTIONS

1. What is a company union? List some of the titles given to company unions.
2. Why do employers favor company unions?
3. Outline briefly the development of company unions in the United States down to the passage of the National Labor Relations Act.
4. What was the effect of the National Labor Relations Act on company unions?
5. Describe the various types of company unions and discuss their methods of operation.
6. Can company unions function effectively as collective bargaining agents? Why or why not?
7. What major criticisms have been made of company unions?
8. What functions can company unions perform well?
9. What are employers' associations? Describe the various types of employers' associations.
10. Discuss the activities of belligerent or militant employers' associations.

BOOK FIVE THE STATE'S
RELATION
TO LABOR

• • • •

27 . . . COMMUNICATION AND INTIMIDATION

INTRODUCTORY

ESSENTIAL to unionism is the freedom of unionists to communicate with other workers, to induce them to join up. Sometimes unionists use intimidation to induce others to join, often claiming that they are using it only because they have to fight employer violence. Every government has rules against intimidation and violence and is almost certain to suppress union force with force. Many governments go further and suppress communication. Within the United States, among the many local, state, and federal governmental agencies, there is a great variety of policies about unionism. In general, unions are tolerated by the government, for most of them are business unions and accept the value of a business civilization. Nevertheless many employers and many other citizens are still unaccustomed to unionism and suspect or fear it; and so American unions have been less free than those in Great Britain, for instance.

Our fourth decade. In the fourth decade of the twentieth century the United States began to catch up to Great Britain in respect to union freedom. The growth of American unions in the first three decades gave unions greater responsibility, greater political influence, and consequently a better legal position; but, as the unions strengthened their position, there were reactions in which police and courts were invoked in order to circumscribe unionism.

At the beginning of the thirties business was receding rapidly. By 1932 both business and unions were at the bottom. Taking advantage of the general feeling that something had to be done to help the laboring class, the unions were able to secure the federal anti-injunction law for which they had worked for forty years, and also a number of state anti-injunction laws (Chapter 29). These laws seemed to promise unions more freedom to seek new members and to demand better working conditions—as soon as a business revival occurred. The decade thus promised to loosen the restrictions on unions.

It was conceivable that government might help unions even more positively in at least two ways: (1) If it could create prosperity, it would help wage earners and their unions as well as the other classes. (2) If government made it legally wrong for employers to discharge men for joining unions or for refusing to join company unions, the employers would lose the chief weapon with which they had been fighting new unions.

The federal government did in fact offer both these aids. In 1930 the Hoover Administration was making limited efforts to revive business; and the Supreme Court, interpreting the Railway Labor Act, ordered a railroad to disestablish a company union. Three years later, after Franklin D. Roosevelt had become President, further action was taken along both these lines. Mention will be made in later chapters of the N.R.A. and relief expenditures; the other revival efforts of the federal government are outside our field. The policy of forbidding employers to discriminate against unionists will be considered at length in the description of the National Labor Relations Board (Chapter 31).

The thirties, then, might be called a period of government encouragement to unions, but this encouragement was limited. Few states passed laws to parallel the National Labor Relations Act, and the labor relations laws and the anti-injunction laws were not interpreted as strictly as the unions had hoped they would be. The revival of unionism which, with the revival of business, had a peak in 1937, was as usual accompanied by the consolidation of an antiunion movement. This reaction expressed itself in the repeal of various provisions of the labor relations laws and of the anti-injunction laws in certain states, and in the imposition of new limits on union activity. There was talk of regulating the internal affairs of unions or imposing compulsory arbitration.

Chapters 27-31, which deal with government's relation to collective bargaining, take up successively government aid to companies, limits on that aid through anti-injunction law (from about 1932 on), and government aid to unions (from about 1935 on).

Government aid. Before describing government aids to employers and, later, government aids to unions, let us see what the main sorts of aid are.

1. Of governmental aids to companies, many have been furnished by injunctions issued by courts against intimidating picketing, against boycotting a company as "unfair," and the like. Damage suits are sometimes brought. If a union has money to appeal, it may get a more favorable ruling in the higher courts, and this fact may influence the lower courts to greater tolerance in future cases.

2. Legislatures as well as courts have a say as to what aggressive action by unions shall be permitted and what shall be left in the permitted area. They may help the employer by prohibiting union organization through picketing, by limiting the freedom to carry on sympathetic strikes, or by intervening in the internal affairs of unions.

3. The legal limits on unions lie to a still larger extent in that part of the criminal law which forbids such acts as the intimidation of nonstrikers. To get government aid of this sort, the company has to have the co-operation of the police and district attorneys. Judges and juries also play a part.

4. Another form of government aid to companies is an outgrowth of the criminal law. It is the unionists' fear of the police. Theoretically it is the function of the police to wait until unionists violate the criminal code and then arrest them; if they resist, the police are to use only as much force as is necessary. These principles are, however, applied elastically. "There's a lot of law at the end of a night stick." For various reasons, police are likely to use repressive force—because unionists seem to be "undesirables," or because it is advantageous to please the employer, or because a show of force seems necessary to establish the supremacy of the police and so of law and order.

5. Since private police, employed and paid by the company, perform about the same function as regular police, their activities may be classed as government aid. Their excesses, to be sure, are not authorized by the accepted rules of government. On the other hand it sometimes condones them, that is, it takes no action to prevent them. The same can be said of the excesses of the regular police.

6. Sometimes a company can get the help of a vigilante movement to repress a new union by force. Such a movement is a substitute for "excessive policing" and, to the extent that government tolerates it, it too might be classed as governmental aid, whether it is spontaneous or company-engineered.

7. Another form of government aid is propaganda unfavorable to unions. Reports of government bodies which are hostile to unions or report unpleasant facts about them perform a function no different from statements by employers' associations and by company executives, but they are more effective because they are labeled impartial. Laws, judicial decisions, and police decisions, too, command respect, and if they oppose unionism or a

union action they crystallize sentiment against it. This sentiment in turn helps to bring about these various forms of governmental aid to employers. Moreover it operates directly on unions by discouraging prospective members. Such a situation, in which people do not join unions because of what the neighbors think, is next door to "vigilantism."

Unions, too, get governmental aid, as we shall see in Chapter 31. The analysis of the aids to employers given above applies roughly to those given to unions. Unions, too, can go to court and assert legal rights of action, though not very many of them. They can get legislatures to create rights for them, as in the National Labor Relations Act. Under the criminal laws they can ask for police protection for peaceful pickets. They can form their own police force and line up a community on their side, but these actions are less likely to be condoned by the government than are the parallel actions of employers. Unions, too, can get favorable reports from government investigating commissions.

In any labor dispute, each side may get a certain amount of government aid, and one cancels out part of the other. The company may get an injunction, but a mediator may persuade it to deal with the union. Or, to take a modern example, the company may get much help from the police but the union may secure an order from the National Labor Relations Board.

The kind and degree of government aid vary as between different parts of the United States. Police action varies between localities; injunction laws vary between states. Ostensible rules may remain unenforced in some places. The federal government may or may not take a hand. Federal courts may take labor injunction cases when there is diversity of state citizenship between parties. The antitrust laws, based on the federal power over interstate commerce, have been invoked against unions; more recently the National Labor Relations Act, based on the same power, has been passed to limit employers. Federal intervention tends to make the law more uniform in the United States.

Certain union actions are especially criticized by judges, police chiefs, legislators, and other public officials. As we shall see a strike for the closed shop is disliked more than an ordinary strike is, and so is a boycott. Violence is generally condemned. Yet the dominant, background reason for condoning or condemning is the attitude toward unionism. This is clearer in the case of the "man in the street." He can be "agin" unions on principle, but when officials attack unions they have to do so by criticizing particular actions. The judge or police chief has to pick out some act to excoriate which will serve as his excuse for setting limits on the offending group. Legislation can be interpreted in opposite ways by different officials, depending on their general

attitude toward unionism or their hope for labor votes or for antilabor campaign-contributions. The same motives operated with the legislators who passed the legislation. As we describe the different degrees of lawfulness which are in practice assigned to various union actions and employer actions, it will be clear that there are officials of varying degrees of pronunionism and antiunionism scattered over the United States. The recent changes in rules of law may be summarized by saying that sentiment about unions fluctuates and that official decisions on the lawfulness of union actions are affected by these fluctuations. Thus in the period 1933-37 unions shook off certain legal obligations and put certain obligations on employers; and in the next years the employers shook off some of those obligations and imposed new ones on unionists.

Economic weapons of unions. Earlier the nature of industrial conflict and the weapons it uses were discussed. We saw that, with a few exceptions, unions try to attain their objectives by negotiation backed by threats of strike; that they resort to strikes only if negotiation fails, since strikes are expensive, difficult to manage, and may, if unsuccessful, lead to the disruption of the union. If the union does decide to strike, its success depends on its ability to hurt the employer by depriving him of a working force and by taking away his customers.

In staying away from work the strikers give up their earnings; they have few savings, and the union treasury can rarely finance a long strike. Unions chiefly rely on picketing to exclude "scabs" and strikebreakers, and claim that picketing notifies the remaining employees that there is a strike. The company, on the other hand, claims that the union uses this device to intimidate and coerce the employees who are still at work. Each is right part of the time. The union is, at the very least, trying to shame the "scabs," trying to impose its mores on them, by making them feel that they are traitors to their group. Mass picketing is naturally a more effective instrument for this purpose than is picketing by a solitary striker. The natural intolerance of any group toward dissenters easily leads to violence. Aware of the possibility and the dangers of violence, union leaders usually stress the importance of peaceful methods. But the conduct of some strikes leads one to suppose that leaders sometimes consider that the *end* of victory justifies the *means* of intimidation or violence to physical property. A weak union will be most tempted by these methods, though a strong one has more chance of getting away with them. Employers use force too. Violence is most likely to occur when the strike is well along and one or both sides feel that, in order to win, they must use stronger measures.

While interfering with the labor supply of the struck company, the union may try to cause the company further loss by cutting off its relations with

sellers or buyers of goods. In order to do this, it may bring about sympathetic strikes by members of the same union or of related unions, and in some cases it may create a boycott by ultimate consumers.

Sympathetic strikes may be called against supply companies or, more likely, against truck companies handling ingoing and outgoing shipments for the struck company, or against firms that buy from it or that work in co-operation with it, such as subcontractors in the construction of a building. In some cases the men do not go on strike but refuse to handle or work on goods from a struck company. The striking union may also have to notify its members in other plants not to work on orders being filled for the struck company.

Ultimate consumers are brought into the struggle where the struck company is in a retail trade or service trade (a store or restaurant); the pickets appeal to workers and customers at the same time. Where the company is not a retailer but deals with retailers, the union may picket the outlets in order to influence their customers. In hopes that when sales of this company's product fall off in the retail store the retailer will stop buying from the struck company and so influence it to settle the strike. Instead of picketing retailers, the union may use a union label or other ways of letting consumers know who is fair to organized labor.

The term "boycott" is most often applied to consumer action, but it is also appropriate to sympathetic strikes. Most boycotts operate by withdrawing labor or trade from companies which are customers of the company resisting the union; these are called "secondary boycotts."

When the union is trying to unionize a shop and does not have enough members to call a strike its weapons parallel the methods used in the strike situations mentioned above. (1) In either a strike or a unionizing drive the union is trying to "sell" unionism to workers, in the former case to keep up morale, in the latter to recruit new members. In recruiting new members the union is preparing to influence the company through its labor supply—it is gathering strength to threaten to strike. And even when the strike comes, it turns out to be partly a unionizing campaign. Since most strikes are not called in solid union shops, during the strike a union has to win new adherents as well as retain its members' loyalty despite the hardships. (2) Unionists also try to influence companies to recognize the union by interfering with the companies' trade relations whenever they can. Unions have always been subject to much criticism and legal attack for picketing in the absence of a strike in order to unionize shops where they have no members.

These economic weapons of unions may be divided as follows:

A. Where the union is fairly strong in the plant and is able to call a strike:

1. It strikes, and pickets to notify employees.

2. The strike is aided by sympathy strikes or by sympathetic refusals to handle goods from the struck company.
3. The strikers appeal to consumers by picketing retailers trading with their company.
4. The company is itself a retailer and the union appeals to its customers.

B. Where the union is weak in the plant:

1. It disseminates propaganda to employees of the plant.
2. Unionists refuse to handle nonunion goods coming from the plant.
3. The union appeals to consumers by picketing retailers who buy from the plant.
4. The company is itself a retailer and the union appeals to its customers.

Against these weapons an employing company has six ways in which it may get government aid. Depending on the situation, it can:

1. Denounce the union's means as constituting force or fraud; thus it may say that the picketing is intimidating or untruthful.
2. Declare that the strike violates an existing collective agreement.
3. Plead that the strike is in an essential industry.
4. Object to the purpose of the union's enterprise.
5. Complain that innocent third parties (companies) are affected by boycotts.
6. Point out that its employees are satisfied—that there is no "labor dispute" (at least in the direct and ordinary sense) to justify the union's damage to the company by picketing or boycotting.

If it wins its plea on the first of these grounds, the weapon which the union has used will be forbidden by a judge or else prosecuted under an existing statute. (Such cases are the content of Chapter 27.) If it wins its plea in the other cases, it can have all the union devices, even entirely peaceful ones, banned by a judge (Chapter 28)—except peaceful communication, which anti-injunction legislation more or less legitimatizes (Chapter 29).

COMPANY DEFENSES AGAINST COMMUNICATION AND INTIMIDATION

This section will discuss the limits which are imposed on unions on the ground that unions are violent. These limits are often set in such a way as to hinder free communication. This section will consider first the typical judicial rules about picketing and the functions of all sorts of *police forces* in relation to strikes and to unionizing. The policing of union activities is based largely on the existence of various statutes and ordinances. Some of these, especially those limiting *freedom to talk*, are given separate consideration. Finally the section takes up a special union method, the *sit-down*, and a special company defense against violence, the *Sherman Act*.

All these legal defenses of companies are in use both in ordinary strikes

and in situations in which the union is trying to invade nonunion territory. But in the unionizing process—or where the company hopes to shake off the union—more is at stake and both sides are more ruthless. It is then that excessive policing and excessive restrictions on freedom to talk are most used. The sit-down, too, has been associated to a large extent with unionizing strikes, and so have certain uses of the Sherman Act against union violence, namely suits for triple damages.

Policing. Policing includes not only the enforcing of well-established law against unionists whose cause tempts them into violation, but also the excessive interference of police or company guards on the strength of their position of authority and on the excuse that their interference is made necessary by union violence. Both types of interference can be found where well-established unions exist as well as where a union is trying to gain a foothold. But the picketing problems which are discussed in the early part of this section are typically those associated with ordinary strikes; the repression by police, company guards, and vigilantes recounted in the later parts is typically associated with union attempts to break into territory that has been nonunion.

Picketing. State supreme courts used to be divided on the question of whether to allow picketing at all, but a majority permitted it, for some purposes at least, and a good deal of picketing went on in states that did not "permit" it. There was much variation in the number of pickets allowed by judges and police. In 1921 an important decision, made by the United States Supreme Court in the case of *American Steel Foundries v. Tri-City Central Trades Council*,¹ endorsed peaceful information and persuasion and said that circumstances were to decide the legitimate number of "missionaries." One of these missionaries was allowed at each gate in this case. The prestige of the Supreme Court is so great that state judges who had permitted more pickets now allowed one or at most two; on the other hand, some courts began to permit picketing.² Immediately after the *Steel Foundries Case*, the Court re-emphasized that picketing was to be no more than missionarying; it held unconstitutional the Arizona anti-injunction law under which the state supreme court had held loud and libelous picketing to be peaceful and lawful.³

When strikers seem to have intimidated employees, most judges have

¹ 257 U.S. 184.

² In nineteen state supreme courts the leading case rejects the argument that picketing is necessarily violent: Arizona, California, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maryland, Minnesota, Missouri, Montana, New Jersey, New York, Ohio, Oregon, Rhode Island, Virginia, Washington, Wisconsin. (October 1937) 6 I.J.A. 45, note 6.

(References to *legal* periodicals are to be read like citations of legal cases. This reference is to Vol. 6 of the *Monthly Bulletin of the International Juridical Association*, p. 45, footnote 6.)

³ *Truax v. Corrigan* (1921) 257 U.S. 312. See "Early Anti-injunction Laws," in Chapter 29.

allowed the stationing of "missionaries" who have little chance to intimidate, but others have forbidden even missionaries, in order to punish the union and to make sure of avoiding intimidation. This is usually a much simpler rule to enforce. A case in which it was not so simple was that of the Busch Jewelry Company of New York City.

On May 17, 1938, two unions called a strike against the Busch stores. About half the four hundred workers went out. As a result of picketing about fourteen arrests were made for disorderly conduct. On June 28 the late Judge Salvatore Cotillo stated that in picketing the retail stores the union had used intimidation and misleading statements; that it had gone to customers' homes and urged them to stop paying instalments; that it had gone to a nonstriker's apartment house and circularized other tenants, and had picketed the house of another nonstriker;⁴ that it had followed another to lunch and denounced her there. He stressed the fact that these employees were women. Saying that the union had abused its privilege, he forbade all picketing. Though the state anti-injunction law permitted peaceful picketing, this judge held that if the law subtracted from the courts' injunction powers it was probably unconstitutional.

The union then undertook to communicate with consumers away from the Busch stores. When union groups totaling three hundred people went to different parts of the city with their signs, the company denounced it as a mere subterfuge and a violation of the injunction. An executive followed one group up Fifth Avenue, urging policemen to arrest them, but without success. In the Bronx a policeman told a group that they must do their picketing in front of the store, but he withdrew his objection when he heard that the judge had forbidden store-picketing. The Fourth of July holiday crowds saw airplanes with streamers urging them not to patronize Busch. The unusual injunction got the strike into the newspapers, and the unusual picketing kept it there. This probably helped the boycott more than it harmed it. The injunction, however, so alarmed A.F.L. and C.I.O. unions that they co-operated in a campaign to prevent other judges from following its example. But in 1939 New York's highest court upheld the injunction, despite the anti-injunction law's stress on freedom of communication.⁵

Types of criminal charge. In the *Busch Case* the arrests after the injunction was issued were for contempt for violating injunctions (a "civil" offense).

⁴ A few months later the New York Court of Appeals banned this type of picketing in the Remington-Rand Case (1938) 279 N.Y. 635. It is a type which accents the appeal to group conformity which is a part of all picketing.

⁵ 281 N.Y. 150, 22 N.E.(2nd) 320; comment (Dec. 1939) 7 Univ. of Chicago Law Review 171-74.

Cf. J. H. Mariano, *The Busch Jewelry Stores Labor Injunction*. Christopher Publishing House. Boston. 1940.

Such arrests are rare.⁶ In the absence of injunctions, and even after injunctions are issued, most arrests are made on minor criminal charges, like the "disorderly conduct" charges just mentioned. Such arrests and threatened arrests break up many picket lines,⁷ for the striker is not anxious to be branded a criminal. Police activity not only may relieve the company of a picket line but causes the union financial embarrassment. Whatever the charge, the union has to pay fines or post appeal bonds, and even though the striker escapes sentence, the union must pay lawyers' fees.

Frequently used criminal charges, besides disorderly conduct, are obstructing traffic, assault, disturbing the peace, and trespass. More rarely there is a state law or city ordinance against picketing or distributing leaflets without a permit (see "Freedom to Talk," below). Picketing is sometimes called rioting or unlawful assembly. Magistrates often sit without a jury in minor criminal cases, as they do in injunction and contempt cases. Like injunctions, minor criminal charges have been used to forbid mass picketing and also, as in the *Busch Case*, to forbid all picketing, so as to eliminate even the chance of violence.

That vagrancy charges too are useful against union organizers could be seen in connection with the seamen's strike in 1936. The fact that it was unauthorized by the national union led police to seize its pickets in many cases. In New Orleans one hundred were arrested for vagrancy and loitering; in Philadelphia the charge was disorderly conduct; in Houston the unionists claimed that the police had invaded the union halls, threatened physical injury if members did not leave Houston, and arrested one hundred and fifty without warrants.⁸

New Jersey has a special vagrancy statute known as the Disorderly Persons Act. Under it, if a person "cannot give a good account of himself," the burden of proof is on him to show that he is not in the state for an unlawful purpose. Striking seamen in 1936 were sentenced by magistrates under this act and also held for jury trial on charges of assault. Similarly, the leaders of a W.P.A. strike were sentenced under the act and were held on riot charges as well, which were dropped when the strike was called off.⁹

The arrest of strike leaders may be very valuable to a company, for the tide can turn against leaderless strikers in a very short time. To disorganize a current strike, it is important to have a charge with high bail, whether the charge can be sustained before a jury or not. If a serious charge can be placed

⁶ In 1904-32 there was an average of one contempt case to every labor injunction granted in New York State. C. Swayzee, *Contempt of Court in Labor Injunction Cases*. Columbia University Press. New York. 1935. P. 42.

⁷ See "Criminal Prosecutions," Chapter 8 of E. Witte, *Government in Labor Disputes*. McGraw-Hill Book Company. New York. 1932.

⁸ (December 1936) 5 I.J.A. 61; *Gurtov v. Williams* (1937), 105 S.W.(2d) 328.

⁹ (July 1936) 5 I.J.A. 2. (October 1936) 5 I.J.A. 36. As to constitutionality, see (May 1938) 6 I.J.A. 143.

against a leader, he may be kept out of the way for a long time, and the reputation of his organization will suffer too. Leaders may be held responsible for all violence that occurs, as in the Haymarket case in 1886, or they may be framed, as were Mooney and Billings in 1916. In antiunion communities little evidence is needed to convict strikers and leaders, as in Gastonia in 1929. On the other hand, juries in pronoun communities will refuse to convict, as in the case of the Herrin massacre in 1922.¹⁰

The powers of the police. The police can go a long way on their reputation and prestige without the support of law in the strict sense. Pickets may yield to the threat of being "run in," for they have learned that violence used by the police is rarely investigated and still more rarely punished. Beating a picket or forcing him to leave town has many advantages over a trial. It discourages his continuing to picket and discourages others from picketing. Magistrates often let arrested pickets go with a warning, and beating or deportation not only avoids the risk that this will happen but also makes it unnecessary for the policeman to appear in court. Law enforcement and intimidation are mixed; the police may use slight violations as an excuse for severe punitive action. In some cases the police may provoke pickets to commit acts that have been declared illegal; where the police are not sufficiently co-operative the company may plant agents in the union's ranks to advise violence, start a fight, throw a stone, or shoot at a policeman at the right time.

The police may also enforce the laws unequally and otherwise harass "undesirables." Thus they may arrest without any intention of bringing the arrested person to trial. Pickets may be discouraged by frequent arrests even if they are only temporarily detained and they may be thoroughly frightened by having a serious charge—like criminal syndicalism—used against them. They may be assaulted or "given the third degree." Such police activity is especially likely to be found in nonunion areas. New Orleans has long been a nonunion town; in 1938 the C.I.O. reported mass arrests there without warrants or lawful reason, and attacks on jailed prisoners. Organizers were taken out of the state and warned not to come back. The fact that a federal injunction was obtained against the New Orleans police indicates that abuses were notorious.¹¹ In September, 1937, the mayor and police chief of Memphis

¹⁰ Witte, *op. cit.*, pp. 169-70 and previous. Criminal charges based on laws limiting freedom of communication are discussed below under "Freedom to Talk." That the arrest of leaders is pressure to settle the strike was brought out by an incident of the Maytag strike of 1938. After sentencing the national union president, the regional C.I.O. director, and a local official each to six months and \$500 for contempt, the Iowa judge offered to parole them and cancel their fines if they would call off the strike. *The New Republic*, July 27, 1938. Vol. 95. P. 318. On April 4, 1939, the Iowa Supreme Court upheld the fines. *The New York Times*, April 5, 1939, p. 18. Cf. statement by Judge Cotillo of New York (three years before his Busch decision, above) that he would issue a sweeping injunction if the teamsters' union did not compromise. (June 1935) 4(1) I.J.A. 8.

¹¹ See *The New York Times*, June 29, 1938. Cf. vagrancy charges, above.

announced that C.I.O. "foreign agitators" would not be tolerated. Three days later an organizer for the United Auto Workers was beaten by twelve men and then jailed with two companions. The sheriff at Macon, Georgia, offered a \$25 reward for C.I.O. organizers; and the mayor of Tupelo, Mississippi, booming with T.V.A. electricity, announced that some unions did not deserve government support and that he would "protect Tupelo's industries from outsiders."¹²

The presence of a mass of pickets is often a sufficient reason for the police to decide that some workers are being frightened away from work and hence that the crowd must be dispersed. Tear gas is now preferred to night sticks, especially if the strikers are armed. That gas is sometimes thought to be not a severe enough lesson is illustrated by the 1937 Chicago Memorial Day massacre, part of the organizing strike against Republic Steel. There a crowd of demonstrators was dispersed. Ten were killed—all shot in the back or side. Seventy were taken to hospitals. This illustration of how the police may be used to intimidate and coerce labor was investigated by the La Follette Committee. The Committee concluded that the police action did not fit with the official Chicago position that police are to permit mass picketing if it is peaceful; that the police had had no plan for dispersing the crowd with the minimum exertion of force; and that the provocation from the crowd was a few bad words and stones. Hence the police were either highly inefficient or were intent on intimidating the strikers; because the police department refused to admit that it had erred in any particular there was no assurance that the incident might not be repeated.¹³

Paramount made a newsreel of the shooting but suppressed it on the ground that it might incite to riot, presumably in revulsion against police brutality. Some papers printed detailed descriptions of the suppressed newsreel and after the publicity Paramount let it be shown where it was not banned. In Chicago the police not only banned public showings but raided a private showing and broke up a meeting to protest the raid.¹⁴ The coroner's jury investigating the ten deaths found justifiable homicide. Marchers were indicted for conspiracy and on December 20, 1937, sixty-one of them pleaded guilty to the lesser charge of unlawful assembly and paid fines of two to twenty dollars.

A year later the police of the Chicago area proceeded more circumspectly in another strike called by the steel union. On June 6, 1938, a strike was called

¹² *Memphis Commercial Appeal*, September 20-26, 1937, quoted in (October 1937) 6 I.J.A. 42.

¹³ United States. Congress. Senate. Committee on Education and Labor (sub-committee). "The Chicago Memorial Day Incident." *Violations of Free Speech and the Rights of Labor*. 75th Congress, 1st Session, Senate Report No. 46, Part 2 (July 22, 1937). Later references to the work of this committee will for convenience be to "La Follette Committee, *Hearings or Reports*."

¹⁴ (September 1937) 6 I.J.A. 37.

in North Chicago to resist a 10 per cent cut by the Chicago Hardware Foundry Company, employing about five hundred people. A majority of the employees quit and shut the plant by mass picketing. In spite of an injunction prohibiting force and intimidation, mass picketing continued. On July 18 ten union members were convicted of contempt. The typical sentence was twenty days, but ten people who had issued or circulated statements condemning the court got longer ones. Criminal prosecutions for conspiracy and intimidation were begun against these ten and ten others. Picketing continued and kept out the foremen. The office workers got into the plant, and in the disturbance six strikers were arrested for resisting deputy sheriffs who were there to supplement the police and enforce the injunction. The strikers' weapon was red pepper.

The next day about three hundred men, women, and children picketed. About seven hundred spectators came to see the "showdown." The sheriff stationed men with gas guns on the roof and sixty deputies and policemen behind the plant gate. At noon the picketers still refused to disperse; when the wind was favorable, the men fired gas from the roof. At that moment the police emerged from the gate and pushed the crowd slowly back an eighth of a mile. They used their clubs occasionally, and 125 gas bombs, a few of which were thrown back by a man who was arrested and announced to be a convict. Meanwhile an organizer who had gone to Indiana to organize a picket line in front of a branch factory was arrested when Illinois notified Indiana of the conspiracy indictment against him. The sheriff promised to keep a force on hand in North Chicago, and when more than a third of the men came to work the next day pickets made no effort to stop them. Three days later a federal conciliator announced that the men would go back with a cut of 5 per cent, another 5 per cent to come a week later.¹⁵

The regular police sometimes need reinforcement. They may call on the sheriff for deputies to help them since he is empowered to deputize persons temporarily when necessary. In many states the state police form a reserve force. If there are many strikers and there seems to be a serious threat of violence, the local authorities may appeal to the governor for militia, which is a federally supervised body called the National Guard. To make sure the Governor will respond the company or local government may have to create a scene of violence. Labor unions dread the militia, yet in some cases it has been more impartial than the local police, and in a few cases has kept the plant from opening with strikebreakers, on the order of a governor anxious for the labor vote (as in the early part of the 1937 steel strike, in Pennsylvania). Stronger, yet more impartial and more experienced and restrained, is the regular federal army, which may be sent by the President on the request of the Governor.

¹⁵ *The New York Times*, July 19, 1938, and thereafter.

Usually the National Guard is used as an extra police force. It is expected to make arrests for criminal conduct and to warn that it will do so. It is not only more impressive than the local police; it has a greater independent discretion. Moreover, it is possible for the governor to give it discretion officially by proclaiming martial law as Governor McNutt did in 1935. A strike of four hundred and fifty out of five hundred employees of the Columbian Enameling and Stamping Company in Terre Haute, Indiana, began in March, 1935. Four months later fifty-eight strikebreakers were brought from Chicago and made deputy sheriffs. As a protest forty local unions called a general strike of fifteen thousand. Martial law was proclaimed as a result of the mayor's appeal for help. Picketing and meetings were forbidden, and no one could enter or leave the county without permission. Fifteen hundred soldiers arrived. About two hundred strikers were arrested, many being kept in custody without charges.

The general strike was called off in a few days, but martial law was not. A union official who had been held without charges was unable to get a writ of habeas corpus, apparently because there was thought to be a "rebellion." He sought an injunction from the federal court but did not succeed in setting aside martial law in spite of the fact that the regular courts operated as usual throughout and that "martial law" was finally being administered by civil officials. This state of affairs continued for months, the soldiers being used to police the Columbian plant, and all citizens except the Columbian strikers enjoying their usual legal rights.¹⁶

The decline in labor union activity between 1937 and 1938 coincided with an even greater decline in the use of the National Guard. In 1937 about 10,000 guardsmen, out of 16,000 mobilized, served in 10 strikes. In 1938 1,800, out of 3,500 mobilized, were called into service in 5 strikes.¹⁷

Public force plus private force. Beside the public police (city police, state police, deputies, militia) there are company police or company guards which a big company sometimes maintains as a regular force and which are sometimes hired only at a time of labor dispute. The company may obtain for them some of the prestige and power of public police by having them sworn in as policemen; we have just seen that in the Terre Haute case a sheriff deputized a group of strikebreakers. State laws sometimes make special provision for railroad police or coal and iron police.¹⁸ Complaints of the law-

¹⁶ (October 1935) 4(5) I.J.A. 1; Walter White, *The Militia*, American Civil Liberties Union, New York, 1935.

¹⁷ "Curbing the National Guard in Labor Disputes" (March 1939) 7 I.J.A. 110. H. R. 10543 and 10544, introduced May 5, 1938, proposed to forbid gifts to the National Guard and to subordinate it to civil authorities in labor disputes.

¹⁸ J. P. Shalloo, *Private Police, with special reference to Pennsylvania*. American Academy of Political and Social Science, Philadelphia, 1933. When a railroad applied for an injunction against strikers, Judge Amidon did the unusual thing in restraining violence by guards as well as strikers. *Great Northern Railway Co. v. Brosseau* (1923) 286 F. 414.

lessness of these police in Pennsylvania led Governor Pinchot to withdraw their licenses, and the companies had to turn to local sheriffs, who were usually willing to deputize their guards. It has been well known that temporary forces of strike guards are often made up of ex-convicts,¹⁹ and the La Follette Committee has shown that regular company police forces are frequently of this character.²⁰

No clear line can be drawn between public police and private police, nor between deputized and undeputized company guards. Slightly different combinations are to be seen in the examples which follow. The Ford Motor Company used a regular force plus temporary reinforcements and turned to the public police only for minor assistance. The Republic Steel Corporation maintained a uniformed and armed force which in time of trouble sometimes clashed with public police. In Harlan County, Kentucky, the United States Steel Corporation has a company town with its own police force, and the Coal Operators' Association terrorized the region with agents, many of whom were not even deputized.

The Ford Motor Company, as we saw in Book IV, was found by the National Labor Relations Board to have violently resisted unionization, especially on May 26, 1937. When the United Automobile Workers announced that members would distribute leaflets on that day, the company added to its "service department" the services of Angelo Caruso and his "down-river gang." The united forces lay in wait at the factory gates and gave the union leaders and distributors terrific beatings. To excuse itself legally, the company first issued a statement that Ford workers had spontaneously reacted against the presence of outside agitators, and then that company agents were merely keeping company property inviolate against trespass. The Dearborn city police served the company by failing to arrest its agents. However, county authorities obtained indictments against eight Ford men. They were never tried. A footnote to the indictment accused six Dearborn policemen of neglect of duty in not helping the unionists, and of false arrest of unionists; but the town took no action against them.²¹

As to the Republic Steel Corporation company police, the La Follette Committee found²² that when several companies merged to form the corporation in 1930 the watchmen were reorganized into a police department with uniforms and arms, on the model of a similar group in the Jones and Laughlin Steel Company, so that

¹⁹ Edward Levinson, *I Break Strikes: The Technique of Pearl L. Bergoff*. Robert M. McBride & Company. New York. 1935.

²⁰ La Follette Committee, *Report*, February 13, 1939: 76th Congress, 1st session, Senate Report No. 6, Part 2, p. 211.

²¹ See Carl Raushenbush, *Fordism*, League for Industrial Democracy. New York. 1937 *Ford Case* (1937) 4 N.L.R.B. 621, 10 N.L.R.B. 1373, 14 N.L.R.B. No. 28.

²² La Follette Committee, *loc. cit.*

. . . the reorganized police departments in the different communities of Michigan, Ohio, Pennsylvania, and New York where Republic operates plants became instruments for suppressing the rights of their employees to freedom of speech, peaceable assembly, and freedom of the press, insofar as the employees sought to exercise these rights with reference to organization into unions . . . Professional strikebreakers, labor spies, and men with criminal records were hired . . . to oppose the organizational drive of the Steel Workers Organizing Committee in 1936-37.

Before that drive or the 1937 strike, the company guards were active in an A.F.L. strike in a Canton, Ohio, plant. At that time the company brought reinforcements from as far away as Buffalo and laid in \$8,000 worth of munitions. During the first day people entered the plant unmolested by the pickets. But the guards

. . . aggravated the temper of the pickets and sympathizers by rushing an armored truck in and out . . . giving the impression that strikebreakers were being transported into the plant. The manner in which the armored truck was driven in and out of the plant, disregarding the safety of the people, provoked the ire of the strikers. After a while, an aroused crowd began to throw stones at the armored truck.

Later two groups of guards came at the crowd from opposite directions.

Both attacked the pickets and bystanders with gas and gun shots. Fourteen people were hospitalized and many more received less serious injuries, including a group of school children . . .

In the next two days, while depredations continued both near the plant and far away, scores were shot, gassed, and clubbed. The police stated that the guards were responsible for the violence which later cost the company more than \$46,000 in damages.

The company had spies on the picket line, including the president and the publicity representative of a union which had struck in sympathy, who were part of the union strategy committee. The strike was broken through the information obtained from these men, as well as through the violence of the guards.

The police department in the various Republic plants resisted the organizing activity of the next years. Spies continued to be elected to union offices, the company exchanging with other employers information collected through labor espionage. Guards interfered with the distribution of union literature on the public highway, assaulting organizers with impunity. Some were shadowed secretly; others openly as a warning to men not to talk to them ("rough shadowing"). The company's police depart-

ment drew money on blind vouchers without making clear just what services were to be bought with it.²³

Few areas in the United States have equaled the reputation of Harlan County, Kentucky, as the site of bloody warfare and in few have local officials been so active on behalf of employers.²⁴ In 1931 a strike by the United Mine Workers against a 10 per cent cut led to "the battle of Evarts." A dozen miners were killed, two reporters were shot, a strikers' relief kitchen was blown up. A department store owner who gave a truckload of food had to flee to escape a charge of criminal syndicalism. Seven union leaders were sentenced to life imprisonment; four years later the widow of the deputy they were said to have killed declared their innocence. Investigating groups were driven out of the county; a committee headed by Theodore Dreiser, for example, was accused of advocating bolshevism and of practicing free love.²⁵ In 1933 the United Mine Workers raised wages by an agreement and an N.R.A. code; this success was made possible by their drive to recruit members in nonunion fields, a drive which was least successful in eastern Kentucky. The Harlan County Coal Operators' Association signed an agreement with the union in October, 1933, and renewed it in May, 1934, after two weeks of strike during which union leaders were arrested for "criminal syndicalism." The association abandoned the agreement a few months later²⁶ and the chairman of the N.R.A. Bituminous Labor Board stated in 1935 that "every mine in the Harlan District except those in contractual relations with the Union violated the Code regulations."²⁷ A commission appointed by Governor Lafoon of Kentucky called their resistance to the union "a virtual reign of terror":

Free speech and the right of peaceable assembly is scarcely tolerated. Those who attend meetings or voice any sentiments favorable to organized labor are promptly discharged and evicted from their homes. Many are beaten and mistreated in most unjust and un-American methods by some operators using certain so-called "peace officers" to carry out their desires.²⁸

Though the sheriff denied that there was any disorder the governor three times in that year sent National Guardsmen to Harlan, giving as some of

²³ Facts and quotations from *ibid.*, pp. 211-214.

²⁴ Accounts of the struggle in other coal fields can be found in *History of Labor in the United States*, The Macmillan Company, New York, 1935. Chaps. 27 and 36; Heber Blankenhorn, *The Strike for Union*. The H. W. Wilson Company, New York, 1924, dealing with Pennsylvania. For economic background see A. F. Hinrichs, *The United Mine Workers in Non-Union Fields*. Columbia University Press, New York, 1923.

²⁵ The results of the Dreiser investigation are in *Harlan Miners Speak*, Harcourt, Brace and Company, New York, 1932.

²⁶ Testimony of Marshall A. Musick before the La Follette Committee, in *Hearings*, Part 11, pp. 3816-18.

²⁷ Quoted in (August 1935) 4(3) I.J.A. 2.

²⁸ *Ibid.*

his reasons that deputies were in the pay of the companies, that people were evicted from their homes without legal forms, that men were reported kidnapped, that innocent persons were assaulted and abused, and that a county attorney who gave advice to the National Guard was killed by a dynamite bomb.²⁹

In 1937 the La Follette Committee held extensive hearings on the events in Harlan since 1933. It found two main devices in use against unionization: the company town, and intimidation by deputized and undeputized company guards.³⁰

Four groups of captive mines (producing only for the use of the parent company) account for about a third of the county's coal production. The parents are United States Steel, Koppers, Commonwealth Edison of Chicago, and International Harvester. Of the 60,000 people in the county, 45,000 live in company towns. The chief of these and the largest town in the county is Lynch, completely owned by United States Steel. The company police, who are the only police, were found by the committee to have used their authority to deny residents freedom of speech and assembly. Outsiders were barred if they were suspected of being unionists. Not only in Lynch but even outside Harlan County the guards were accustomed to confiscate union literature and shadow and threaten organizers.

Most of the other companies belong to the Harlan County Coal Operators' Association. The association won over Sheriff Theodore Middleton when he assumed office in 1934. He retired four years later richer by \$100,000. Financial favors also went to the district attorney and the county judge. The deputies appointed by the sheriff were selected, paid, and controlled by the operators and frequently had long criminal records. The association's "field man" or "head road killer" had at his disposal a large fund with which to reward deputies zealous in resisting the union. When the union began an organizing drive, the association would double its assessments, as it did after the passage of the N.I.R.A. in 1933 and the N.L.R.A. in 1935, and in 1937 before and during the La Follette hearings. The secretary, however, destroyed its financial records to keep them from the Committee.

Undeputized supervisory employees acted as auxiliaries to the deputies with a violence unrestrained by the law:

The most notorious of these bands was the "thug gang" supported by Pearl Bassham, vice president and general manager of the Harlan Wallins Coal Corporation, and directed by one of his deputy sheriffs, Merle Middleton, a cousin of the high sheriff.

²⁹ *The New York Times*, September 29, 1935.

³⁰ La Follette Committee, *Hearings*, Parts 9-13; summarized in the *Report* cited above, February 13, 1939, pp. 17-115.

Together they prevented miners from attending meetings and "rough-shadowed" leaders. They forced out of the county a minister who preached against the violations of civil liberties.

[They] repeatedly fired on union organizers, from ambush on the public highways, in open country, and even in their own homes. They kidnapped and assaulted union officers, and dynamited the homes of union organizers. They discharged tear gas bombs in a public hotel where union men were guests, endangering not only their lives but also the lives of the other guests in the hotel, including women, cripples, and small children. In numerous instances they seriously wounded union men by shooting them with dumdum bullets. Their terroristic acts culminated in the murder on February 9, 1937, of Bennett Musick, 17-year-old son of Marshall A. Musick, union organizer and resident of Harlan County for 14 years.³¹

After the La Follette hearings, the National Labor Relations Board investigated the Harlan companies. It ordered the Clover Fork Coal Company to reinstate sixty men and to cease and desist from antiunion practices in the future. The Department of Justice, in undertaking to punish some of the antiunion practices of the past, brought criminal suit against various coal companies, company officers, and deputy sheriffs, and charged conspiracy to deprive miners of their right to organize freely, a right affirmed by the National Labor Relations Act. The statute under which they were tried was the long-dormant Civil Rights Act of 1870, passed to protect Negroes. One of the association defenses was that the N.L.R.A. protected employees but not organizers.³² During the trial in 1938 one defendant was killed, a government witness shot, and the home of another witness dynamited; the N.L.R.B. handed down a decision against the Harlan Fuel Company, whose president is said to have been the head of a gang of thugs; and the Circuit Court upheld the N.L.R.B. order against Clover Fork.

At the end of the criminal trial the jury disagreed. Though it was segregated during the long trial, it was able to see a defendant deputy sheriff "parading" with his arms around "substantial citizens" of Clay County, a county from which several jurors had been drawn. It was the Clay jurors who were for acquittal. One of them, however, who was for conviction, was so unpopular after the trial that "he had to thumb his way home."³³

That there was a trial at all was a surprise to most of the region, and it affected local law. As we shall see, the state had amended the law relating to deputies just before the trial. Afterwards the union signed a contract with the association embodying in it the terms prevailing in neighboring areas, and providing for the reinstatement of 243 men and the dropping of the N.L.R.B.

³¹ Quotations from *Report* cited, pp. 209-10.

³² *The New York Times*, July 31, 1938.

³³ *Ibid.*, August 2, 1938, pp. 1, 8. See also *Report* cited, pp. 111-14.

cases. The United States Steel company union was dissolved. However, in May, 1939, at the end of the national coal strike, when the Harlan companies refused to accept the union-shop settlement, Governor Chandler sent 1,050 militiamen to prevent union picketing. After several months a settlement was reached; 400 indictments against strikers were dropped, as was the conspiracy case against the operators.³⁴

The abuse of deputization is limited in some states by statute. One sort of limit was occasioned by the early activity of the Pinkerton Detective Agency, which supplied large railroad, mining, and steel companies with professional strikebreakers later sworn in as deputies. Statutes passed in some states attempted to correct this abuse by establishing a residence requirement, as Pennsylvania did after the Homestead strike. As a result of the La Follette Committee and similar investigations Pennsylvania and Kentucky have changed their laws to insure that only reputable persons may be deputized. They have legislated against using former criminals and former strikeguards and have joined West Virginia in forbidding salary or other payments to deputies by employers.

In 1939 the La Follette Committee introduced a bill which would penalize, among other "oppressive labor practices," the employment of company guards except on company property, the employment of ex-convicts as guards, and the possession by either party during a labor dispute of munitions such as machine guns and tear gas.³⁵ This bill was to complement the Byrnes Act of 1936, which forbade transporting persons across state lines for purposes of intimidating pickets.

"*Vigilantism.*" Vigilante activity may be classed with policing. It performs the same function, whether it is company-created or spontaneous. In either case, if the government permits it, it is, in a sense, government aid. When it is not spontaneous, the company will try to make it seem so. The actions of company guards will be labeled the actions of an aroused community. We saw in the *Ford Case* that the beating of unionists was first laid to indignant employees; in the San Francisco general strike of 1934 the vigilantes raiding union and radical offices dressed in rough clothes to give the impression that they were outraged union members.³⁶

After a long career of hiring out professional strikebreakers to companies, Mr. Pearl Bergoff, it is said, was among the first to see the advantages of

³⁴ Report cited, p. 112; *The New York Times*, May 14, 1939, and ff., including September 30, 1939.

³⁵ *Oppressive Labor Practices Act*. Hearings before a subcommittee of the Committee on Education and Labor on S.1970, Seventy-sixth Congress, First Session. May and June 1939. Government Printing Office. Washington, D. C. 1939.

³⁶ Samuel Yellen, *American Labor Struggles*. Harcourt, Brace and Company. New York. 1936. Chap. 10.

exploiting amateurs.³⁷ "Citizens' committees" may be formed to help with strikebreaking.³⁸ They may recruit vigilantes—often enlisting war veterans first. Veterans' organizations officially assume the position that their members are to take united action against strikers only if they have been deputized, but local leaders and members do not always make the distinction or preserve the forms of law carefully. America's tradition of "vigilantism" is not confined to the early Far West, where the law was too remote or too slow to suit people. Lynchings have been frequent and, in general, where people feel strongly about an issue and the government will not do what they want, they are likely to take the law into their own hands. Where strikers use intimidation to prevent others from entering a plant, they too are taking the law into their hands and providing an excuse for vigilantism. But it is a union's success, not the intimidation it may exercise, that is the cause of vigilantism; and vigilantism easily passes from using the force necessary to prevent intimidation to using intimidation against strikers.

The company usually wants the strikers back at work, but if there are relatively few of them or they are easily replaceable, vigilantism may drive the strikers out altogether as a warning to others. A famous deportation of miners took place at Bisbee, Arizona, in 1917. More recently, in Westwood, California, a lumber town of 4,500, after two days of strike against a 17.5 per cent cut, a crowd of 1,500 broke up the C.I.O. picket line before the Red River Lumber Company, beat the men, and then drove 125 men and their families out of town by turning fire hoses on them. The sheriff asked for troops, but sent them back because the town was quiet. Members of the Industrial Employees Union, recognized by the company, patrolled the streets with rifles.³⁹ This union joined the A.F.L. immediately afterwards.

If a company is able to persuade the whole nonstriking population to oppose the strike, it may exert moral as well as physical pressure on the strikers. This appears from the "Mohawk Valley Formula" used by Remington-Rand, by means of which advertising, fear of money loss, police, vigilantes, and public opinion were brought to bear on striker opinion. None of the methods listed is new, but they have rarely been more thoroughly worked out and co-ordinated than by Remington-Rand in 1936 and by the "Little Steel" companies in 1937.⁴⁰

In theory vigilantes, like lynchers, may be prosecuted. In theory also, the victims may sue the city or county for not protecting them. If a company has incited to vigilantism, the National Labor Relations Board has power to order it not to do so in the future.

³⁷ E. Levinson, *Labor on the March*. Harper & Brothers. New York. 1938. P. 219. Levinson's biography of Bergoff is *I Break Strikes*, cited earlier.

³⁸ La Follette Committee, *Hearings*, Parts 17-18.

³⁹ *The New York Times*, July 14, 1938, p. 22.

⁴⁰ See Book IV above, and La Follette Committee, *Hearings and Reports*

Freedom to talk. Unions depend on freedom to talk—on freedom of speech, press, movement, and assembly. Their freedom is threatened by the use or abuse of various local, state, and federal laws. These laws (except the antipicketing laws) usually do not avow a purpose to limit unionism. Laws against advocating the use of violence (the first group to be taken up here) are largely phrased in terms of overthrowing the government. Antileaflet ordinances (another group) usually apply to religious and commercial publications as well as to labor leaflets. Freedom of assembly has been denied to various unpopular movements as well as to unions. But unions are affected, both because organizers have been jailed on the excuse that they are Communists or are dropping leaflets and littering the streets and because restrictions on the liberty of any group may make it easier to restrict the liberty of unionists.

Criminal syndicalism and deportation. Next to a charge of murder, the most effective legal weapon against troublesome labor leaders is the accusation that they are radicals or revolutionaries. Membership in the I.W.W. or the Communist party has been a favorite charge. If the accused is an alien, he may be deported by the federal government. In nearly half the states a citizen or alien so accused may be indicted under a criminal syndicalism or similar law which carries a long prison sentence.

Opponents of these laws maintain that advocacy of violence should be punishable only when there is "a clear and present danger" that violence will result. Under the Espionage Act of 1917, the Supreme Court held that Socialists could be jailed if they distributed leaflets opposing the military draft and trying to create insubordination among soldiers. Holmes wrote the unanimous opinion, and stated that the test was whether the words were used so as to create a clear and present danger of insubordination.⁴¹

The state criminal syndicalism laws too originated during the War period and were aimed at the I.W.W. as, indeed, their name implies. The Supreme Court upheld them in 1927, for though the Court in a Kansas case found that the I.W.W. (by then moribund) had not been shown to advocate violent overthrow, in a California case it upheld the conviction of a socially prominent woman for participating in the organization of the Communist party, although she had voted against a "violence" plank at the party convention.⁴²

Under the California law, in the years between 1919 and 1924, 504 persons had been arrested, 264 tried, 164 convicted.⁴³ The I.W.W. had been smashed. Its strength had been among migratory, often agricultural workers,

⁴¹ *Schenck v. U.S.* (1919) 249 U.S. 47.

⁴² *Fiske v. Kansas* (1927) 274 U.S. 380; *Whiney v. California* (1927) 274 U.S. 357.

⁴³ George W. Kirchwey, *Survey of the Workings of the Criminal Syndicalism Law of California*, quoted on p. 14 of H. Solow, *Union-Smashing in Sacramento*, National Sacramento Appeal Committee. New York. 1935.

and a revival of agricultural unionism again called out the weapon which had once destroyed it. The culmination was to be the trial held in 1935 in Sacramento. In 1930 the Communist party had helped to organize the Agricultural Workers' Industrial Union of California. After a few successful strikes, it was broken when its organizers were convicted of criminal syndicalism. The Mexican defendants were deported by the federal government and the others were imprisoned by the state and later paroled. The union was revived, in the depth of the depression, as the Agricultural and Cannery Workers, and again won strikes. The employers organized a campaign of terror against it and through vigilantes attacked a mass meeting in 1933 with such violence that two strikers were killed. The organizer was tried for criminal syndicalism, but the jury disagreed.

By 1934 the terror had practically broken the union in the Sacramento Valley. A last stand was made in June, when four hundred apricot pickers quit and picketed. Deputies herded them into a railroad cattle pen, picked out the leaders, and escorted most of the others to the county line. The San Francisco general strike had engendered a "Red" scare, and this set the stage for the arrest of eighteen agricultural union leaders in July. Even though some were arrested in their own homes, they were charged with vagrancy. The trial lasted a month, and meanwhile criminal syndicalism indictments were obtained. The district attorney who had obtained them was defeated for re-election, but a special law was passed so that he could represent the state as a special prosecutor. Excitement and prejudice were aroused by the press against the Communist organizers during their second trial, for criminal syndicalism. This affected the jurors, who returned to their homes daily during the sixteen weeks of the trial. The result was a compromise. Some defendants were acquitted (one was then deported); the others were acquitted on most counts but were found guilty of forming political and economic organizations (that is, of "conspiring") to advocate violence.⁴⁴

In cases of this kind the charge may include "justifying violence to all police," on the ground that the defendants resisted arrest, though resisting may be justified, as a California appeals court pointed out in 1933, because criminal syndicalism arrests may be "simply the means used to break up the meeting."⁴⁵

While the Sacramento prisoners were in jail, an appeal under the Oregon criminal syndicalism law reached the Supreme Court. The conviction of Ben Boloff for mere membership in the Communist party had led the state legis-

⁴⁴ Solow, *op. cit.*; Carey McWilliams, *Factories in the Field*. Little, Brown & Company. Boston. 1939. Chaps. 13-15. See James Rorty, "Lettuce with American Dressing," *The Nation* (May 15, 1935). Vol. 140. No. 3,645. Pp. 575-76. Cf. pp. 309-31 in his *Where Life Is Better*. The John Day Company. New York. 1936. McWilliams and Rorty indicate that A.F.L. organizers received little better treatment than did communist organizers.

⁴⁵ Quoted in (November 1935) 4(6) I.J.A. 6, note 23.

lature of 1933 to strike out the "membership" clause of the law. In 1934 Dirk De Jonge spoke at a meeting called by the Communist party to protest against police behavior during current strikes. He was charged with assisting a meeting of an organization which (in the words of the revised statute) "then and there" advocated violent overthrow. The jury brought in a verdict of guilty with a recommendation of leniency, and he was sentenced to seven years. On appeal, the state supreme court held that it was enough to show that *at the time* of the meeting the Communist party still held violent views, rather than that it preached them *at the meeting*. It was conceded that no speeches or leaflets at the meeting advocated violence. The federal Supreme Court in January, 1937, held that, under the Fourteenth Amendment, "peaceable assembly for lawful discussion cannot be made a crime," so this particular application of the statute was void and De Jonge was released.⁴⁶

In the fall of 1937 the Sacramento prisoners, who had been tried in 1935, were released after an appeal. The court upheld the California criminal syndicalism law, but decided that the jury in compromising had contradicted itself; it had acquitted the unionists of acts which it then convicted them of conspiring to do.⁴⁷

This decision of the supreme court was somewhat surprising in the light of California's criminal syndicalism convictions in the previous years. In none of them had the state been able to show personal participation in subversive activity. It had always relied on showing membership in the Communist party, as in the Whitney case referred to above. The Sacramento opinion seemed to upset this rule and to call for proof of personal advocacy of violence—a requirement which had been stressed by the federal Supreme Court in the spring.

This "liberal" interpretation of the California law and the decision to release the prisoners were offset by a pronouncement by the court about the "clear and present danger" test. It referred to sit-downs and other current unlawful labor activities and said that the Sacramento defendants had participated in strikes in which violence was used. It was of the opinion that there had been clear danger that they would "obstruct the law." It is unusual for a court to justify a criminal syndicalism statute on labor dispute grounds; judicial opinions usually stress advocacy of violent overthrow.

In 1939 the Supreme Court had before it the problem of union leaders whom employers wanted deported on the ground that they were Communists. Twenty years before, the postwar antiunion drive and "Red" scare had led to

⁴⁶ *State v. Boloff* (1932) 138 Ore. 568. *De Jonge v. State* (1935) 152 Ore. 315. *De Jonge v. Oregon* (1937) 299 U. S. 353. Oregon then repealed its law; so did Washington. Cf. *Herndon v. Lowry* (1937) 301 U. S. 242, releasing a Negro Communist organizer, since it had not been shown that he advocated violence.

⁴⁷ *People v. Chambers* (1937) 22 Cal. App. (2d) 687.

mass deportations by federal Attorney General Palmer—and even to some deportations quite unauthorized by Washington.⁴⁸ The immigration laws provide that members of organizations advocating violent overthrow are not to be admitted, and if immigrants later join such organizations they are to be deported. This law has sometimes been the basis for deporting various persons active in the labor movement and fear of this type of reprisal hampers union activity.⁴⁹ In the case of Joseph Strecker, the Supreme Court ruled in 1939 that the statute did not apply to *former* members of the Communist party. There was a strong movement to cause the deportation of Harry Bridges, Pacific coast longshore and C.I.O. leader, on the charge of membership in the Communist party. But the Department of Labor in 1940 found the evidence insufficient.

Leaflet ordinances. There have been a great many American municipal ordinances against distributing leaflets.⁵⁰ Some simply forbade it; those that required a permit perhaps made it a little easier for officials who wanted to discriminate against unionists or radicals in the enforcement of the law. While some ordinances were held unconstitutional, the first serious setback was given them by the decision of the Supreme Court in the *Lovell Case* in 1938.⁵¹ The Court said that the freedom of the press was unduly infringed by an ordinance of Griffin, Georgia, which required permits to distribute leaflets. This decision seemed to strike down all leaflet ordinances. Jersey City now agreed to renounce the leaflet ordinance (which simply forbade distribution) which it had used for twenty-two years. Jersey City's Mayor Hague stated that he intended to use instead the state laws against disorderly conduct and unlawful assemblage, whose penalties were more severe than those of the leaflet ordinance.⁵² But the ordinance continued to be a cause for complaint and it was specifically condemned by the Supreme Court in the Jersey City case mentioned later.

Attempts were made to limit the Lovell decision. One line of attack classified union or radical activity as commercial. Another forbade house-to-house canvassing without a permit, even if street distribution was permitted. The chief method, however, justified the ordinance as designed to prevent

⁴⁸ Louis F. Post, *The Deportations Delirium of Nineteen-Twenty; A Personal Narrative of an Historic Official Experience*. C. H. Kerr and Company. Chicago. 1923.

⁴⁹ Felix Frankfurter and Nathan Greene, *The Labor Injunction*. The Macmillan Company. New York. 1930.

⁵⁰ They are described in (June 1937) 5 I.J.A. 147-151. See also (September 1938) 7 I.J.A. 30-32 and (March 1939) 7 I.J.A. 106-7.

⁵¹ *Lovell v. Griffin* (1938) 303 U.S. 444.

⁵² *The New York Times*, April 1, 1938. The New Jersey disorderly persons law was referred to above in the discussion of vagrancy. The leaflet ordinance of Westfield, N. J., which required the applicant for a permit to give his employer's name and his own fingerprints, was voided by a state court. *Ibid.*, February 25, 1939, p. 32.

littering. This justification was repudiated by the Supreme Court in voiding several such ordinances in 1939.⁵³

Picketing laws. The Lovell leaflet decision seems to imply that peaceful picketing, since it is analogous to written leaflet communication, is protected by the federal Constitution. If so, a number of state anti-picketing laws are in jeopardy; in still more danger are the many local ordinances which forbid picketing by name or indirectly.⁵⁴ Even court decrees—injunctions—against peaceful picketing might conceivably be set aside by appeal to the federal Constitution or to similar clauses in state Constitutions, though the precedents are against this sort of appeal.

Among antipicketing *statutes* now in existence, Nebraska's was approved on referendum, and so, more recently, was Oregon's. Alabama's had its constitutionality reaffirmed in 1936; the Colorado law was held to have been voided by the new state anti-injunction law. Hawaii's has been voided too. Texas' open-port law of 1920 was held unconstitutional in 1926. Utah's anti-picketing law is limited to boycotts. Early decisions in the California, Missouri, and Oklahoma supreme courts held *ordinances* void, but the Maryland Court of Appeals has recently approved one. Lower courts, too, are divided. The Indiana Supreme Court, which approved an antipicketing ordinance in 1924 on the theory that picketing is never peaceful, disapproved one in 1937 because it conflicted with the new state anti-injunction law.⁵⁵

In Birmingham, Alabama, the police interpreted the state law as drawing a dead line three hundred feet from struck plants; the law sets minimum penalties of \$100 fine for first offenses and three months' hard labor for second.⁵⁶ A Washington antipicketing law was interpreted by the courts to allow picketing one hundred feet from struck plants. After a strike in 1938 at Little Falls, New Jersey, the town passed an ordinance that pickets must stay thirty feet apart and not cry out or call names.⁵⁷ To collect dues and get members,

⁵³ *Schneider, Young, Snyder, and Nichols* cases, decided together, Supreme Court of the United States, Nov. 22, 1939, 5 Labor Relations Reporter 332-35. The Court decided that, if leaflets were not sown broadcast, the city would have to clean up those that were dropped. The Milwaukee ordinance was not saved by the fact that arrests were made only if there actually was littering, nor were the Los Angeles and Worcester ordinances saved by the fact that they permitted distribution in public places other than streets and alleys.

⁵⁴ An indirect ban on picketing was the Madera County, California, ordinance against parades, declared unconstitutional by a federal court in 1939, after it had supplemented vigilante action against striking cotton pickers. *Civil Liberties Quarterly*, December, 1939, p. 3.

⁵⁵ *O'Rourke v. Birmingham* (Alabama) Monthly Bulletin, League for Industrial Rights, July, 1936, p. 15. *People v. Harris*, December 20, 1937, in a lower Colorado court. The judge was apparently reflecting the spirit of the new law, since its letter banned only injunctions. *Territory of Hawaii v. Anduha* (1931) 48 F. (2d) 171; *Ratcliff v. State* (Texas, 1926) 289 S.W. 1073; *Maryland v. Kimbel*, Labor Relations Reports, Sept. 13, 1937; *Local Union 26, National Brotherhood of Operative Potters v. City of Kokomo* (Indiana, 1937) 5 N.E. (2d) 624.

⁵⁶ (September, 1937) 6 I.J.A. 27.

⁵⁷ *The New York Times*, June 7, 1938. In Ridgewood, New Jersey, a proposal was made to tax each picket's sign \$50 a week (September, 1938) 7 I.J.A. 27.

the United Automobile Workers at Flint, Michigan, where they had an agreement with General Motors, in 1939 formed a corridor of pickets through which employees had to pass. As a result, the city council, despite the presence at the meeting of many hostile unionists, voted five to three to make it a crime to molest or solicit persons on their way to or from work.⁵⁸

Ordinances against picketing have flourished throughout California after the state supreme court upheld one in the *Williams Case* in 1910. Although various more recent court opinions have cast doubt on their constitutionality, San Francisco had one for twenty years, but it was repealed by referendum in 1937 and an attempt to restore it was voted down. At Los Angeles the Circuit Court invalidated an ordinance in 1936, and a new one was vetoed by the mayor on January 7, 1938. However, by initiative referendum, on September 17, 1938, the city adopted a very strict one. The town of Ventura had already adopted such a one, and the state of California in November, 1938, came close to adopting a similar one by referendum.

This defeated bill in California, a similar one defeated at the same time in Washington, and one adopted in Oregon were all aimed not only (1) at certain sorts of picketing but also (2) at certain sorts of strike and boycott, in connection with which all picketing was to be forbidden. The same was true of the new ordinances and of the 1939 legislation which amended several state labor relations laws by enacting limits on unions. Some ways in which the second aim was achieved are suggested here; they will be given more fully in the next chapter.

The Los Angeles ordinance forbids picketing except by persons who had been employed by the company at least thirty days. No more than one picket is allowed to each entrance. No picket is to be nearer than twenty-five feet to another one, nor may any one cry out or use "derogatory" language. Pickets may wear armbands and may carry banners twenty by thirty inches which may advertise the name of the union, the word "picket," and the fact that a strike exists, but nothing else. As to the second aim, the thirty-day rule forbids picketing in a boycott not part of a strike, and no picketing at all is allowed in strikes not supported by a majority of the employees. There two provisions militate against unionizing.

The Los Angeles ordinance was interpreted narrowly by an intermediate court in the *Garcia Case* on December 29, 1939, when the court upheld pickets' signs which said that the employer was "unfair to organized labor" and that "we want decent wages." The court also upheld pickets' freedom to state conversationally that "this place is on strike, don't work here." Early in 1940 an antipicketing ordinance of Shasta County, California, was challenged before the federal Supreme Court in the *Carlson Case*, but at the same time

⁵⁸ *The New York Times*, February 12, 1939, p. E12. On June 8, 1939, a Michigan law took effect which included a new ban on "coercing" employees to join unions.

another antiunion referendum was scheduled for submission to the voters of California in November, 1940. This proposal was for a constitutional amendment which would set up a "mediation board" to prevent unfair labor practices by companies and more especially to limit unions in many ways: (1) Not only sit-downs but all "obstruction" and "compulsion" would be prohibited, and so would picketing by nonemployees. (2) Compulsory arbitration, apparently forbidding all strikes, would be coupled with bans on particular types of strikes and on the closed shop and the checkoff.

The Oregon law limits all picketing through a vague clause forbidding obstruction of lawful buying and selling or interference with persons seeking employment. As to the second aim referred to above, picketing was completely prohibited in jurisdictional strikes and in fact in any strike if the majority did not support it or if the strike was not for direct improvement of conditions. The effect was to outlaw strikes for the closed shop, sympathetic strikes, and picketing to unionize or to boycott.⁵⁹

During the legislative session of 1939, the new Republican administrations in Wisconsin and Pennsylvania rewrote the state labor relations laws by cutting down the governmental aid to unions and adding several forms of governmental aid to employers. The Wisconsin law as rewritten banned mass picketing. All picketing was unlawful if a majority had not voted by secret ballot to call the strike or if farm workers struck without notice. The Pennsylvania law as rewritten provided additional punishment (as an "unfair labor practice") for sit-downs or for intimidating employees to make them join unions. Both laws also provided additional penalties for coercing or intimidating employers.

In Minnesota and Michigan labor relations laws were passed which contained little in the way of state aid to unions but many restrictions on them. These laws required that strikes be announced some days before they occur. The Michigan law forbade coercing employees to join unions. The Minnesota law prohibited sit-downs and the attempt to compel anyone to join a union or to strike. It also forbade picketing unless a majority of the pickets were former employees, but it did allow one picket where no strike existed. Additional penalties were placed on interfering with the free use of highways; also, specifically, with the operation of trucks when neither the owner nor the operator was a party to the strike. This part of the law was aimed chiefly at the powerful truck drivers' union, which farmers accused of

⁵⁹ The law authorizes both prosecutions for misdemeanors and petitions for injunctions. The former method was used May 5, 1939, when twenty C.I.O. pickets were indicted for picketing a ship, and the second on May 11, when three pickets were dispersed by injunctions. *The New York Times*, May 12, 1939, p. 1. An appeals court held the law constitutional. *Ibid.*, July 10, 1939, p. 3. In the referendum which passed it, this law received many votes in working-class districts, apparently because of the extreme trouble which the C.I.O.-A.F.L. fight has occasioned. The antiboycott clauses were intended to quell that trouble.

preventing them from doing their own trucking.⁶⁰ A bill to limit "interference" by striking truck drivers passed the New York legislature but was vetoed on the ground that intimidation and violence were already criminal and that the vague term "interference" might be interpreted to apply to peaceful actions.⁶¹

Jersey City. We saw above that New Jersey has disorderly persons, disorderly conduct, and unlawful assembly statutes, and Jersey City has had a leaflet ordinance, passed in 1924, and an ordinance limiting open-air public meetings (1930) and one prohibiting the display of placards by pickets (1935). All these were invalidated by the federal Supreme Court in 1939.

Jersey City is across the Hudson River from New York City and has attracted many shoe and clothing manufacturers and others seeking to escape union wage scales. A few unions have been tolerated because they worked with Mayor Frank Hague's political machine, but most unions have not been permitted to exist in Jersey City. Thus when the C.I.O. began organizing it met with strong resistance.

For Jersey City employers to resist unions successfully, seemingly all that was necessary was to apply strictly, to unionists, some or all of the laws we have listed. However, short cuts are easier; the police made a rule against picketing in the absence of a strike. In most of the unionizing drives no strike had been called, and the rule applied. Moreover, the police seemed to interpret the rule to cover almost all union activity, for their chief, testifying in March, 1937, was able to remember only two or three cases in which he had allowed picketing. He said that the ban had existed ever since he had joined the force.

The Jersey City police also followed a practice which in other towns was used less ostentatiously: the chief testified that he told his men to prevent picketing but "not to make an arrest unless it was absolutely necessary." The police would force the pickets to leave the city, especially if they did not seem to be Jersey residents. Neither the chief nor the commissioner of public safety saw anything out of the way in this procedure. The latter, in fact, said that the police "have a right to escort them out if they are doing anything wrong; if the case don't warrant an arrest they have a perfect right to do it."⁶² The assistant corporation counsel of Jersey City was more sophisticated; yet he was not willing to agree that the prevention and punishment of illegal acts were the function of the courts or that a policeman was

⁶⁰ *The New York Times*, May 6, 1939. On the Minneapolis truck drivers, see C. R. Walker, *American City*. Farrar & Rinehart, Inc. New York. 1937.

⁶¹ *The New York Times*, June 6, 1939.

⁶² Testimony quoted on pp. 10 and 23 of *Civil Rights vs. Mayor Hague*, American Civil Liberties Union, New York, 1938. Mayor Hague had been ready to "deport" strike *breakers* when it suited his purposes to help strikers. *Swift v. Hague* (1920) 2 Law and Labor 9-10.

guilty of assault if he evicted a person from the town or even shoved a picket with no intention of arresting him. Because picketers were so rarely arrested and brought before the courts, the unions were unable to resist Jersey City practices by arguing in court. Their lawyers advised them to ask the courts for an injunction. In 1937 they joined forces with the American Civil Liberties Union in doing so. In a federal court, which was less likely to be influenced by state politics,⁶³ they urged that citizens of any state had a property right in the free use of the sidewalks anywhere. Judge Clark ruled in their favor, but the injunction they secured was buried in the appeals court.⁶⁴

After the Lovell leaflet decision of 1938 had indicated that the Fourteenth Amendment requires the states to allow freedom of speech and the press, the C.I.O. again sought an injunction. It also pleaded these constitutional rights against the placard and meeting ordinances. Pointing to other aspects of the Fourteenth Amendment, it claimed that, since these New Jersey laws were not applied to other organizations, the unions were denied "equal protection," and that the police "deportations" were not "due process of law."

Judge Clark of the federal district court on November 7, 1938, issued an injunction against Mayor Hague and others which stated without qualification that unionists should be at liberty to move about and speak to others; that if the police felt that a law was being broken they were to arrest the offenders and bring them before a judge, instead of deporting them; that unionists could give out leaflets in public places and carry placards, with the reservations (also made by the Supreme Court in the Lovell case) that they were not to be obscene or advocate unlawful conduct and that the unionists must behave in a manner "consistent with the maintenance of public order and not involving disorderly conduct, the molestation of the inhabitants, or the misuse or littering of the streets."

In 1939 the injunction was upheld by the Circuit Court, which agreed that the C.I.O. unions were not guilty of any misconduct which should deny them the power to ask for an injunction; they "came into court with clean hands." It rejected the argument that the injunction would require the district court's continuous supervision of the town government.⁶⁵

The Supreme Court not only upheld the injunction against Jersey

⁶³ Soon afterward the New Jersey Supreme Court rejected a similar suit. *Thomas v. Casey* (1938) 121 N.J.L. 185.

⁶⁴ *Civil Rights v. Mayor Hague*, just cited, p. 31. The judge at first seemed to think that it was illegal to picket in the absence of a strike. He later took the opposite position. *Ibid.*, pp. 14, 19. Even if the federal Constitution does not make such picketing legal in New Jersey, the short-cut police methods are not justified.

⁶⁵ *Hague v. C.I.O.* (1939) 101 F. (2d) 774. The decision was preceded by charges that Presiding Judge Davis was packing the court against the C.I.O. *The New York Times*, November and December, 1938.

City but changed it by declaring the leaflet ordinance completely void and saying that the lower court should not try "to formulate the conditions" under which unionists may distribute literature. Similarly it declared the public assembly ordinance wholly void. The court indicated that the suit was made possible by the post-Civil War Civil Rights Acts; it thus implied some approval of the reviving of these Acts in the Harlan trial of 1938 (above) and the setting up of a Civil Liberties Bureau in the Department of Justice in 1939.⁶⁶

Freedom to assemble. While picketing and leaflet distributing were among the actions affected by this Jersey City case, the chief element of interest in it was freedom of assembly. The ordinance governing public meetings allowed the director of public safety to refuse a permit for a meeting if the meeting promised to result in a disturbance or a riot. The C.I.O. charged that Hague followers caused riots at meetings not only in order to break them up and intimidate speakers and listeners but also to give the director of public safety a legal excuse to refuse permits in the future. (He could in any case refuse a permit for a prominent street corner on the ground that the corner was pre-empted by some other meeting.) When, as part of the C.I.O. attempt to break down Mayor Hague's bans, Congressmen were invited to speak, they were prevented from speaking by a "Red-baiting" excitement stirred up by the Mayor, who was supported not only by his political dependents but also by the Catholic Church and by veterans' organizations.

When the Jersey City case came to the district court, it seemed clear to Judge Clark that open-air meetings called by unionists were likely to result in disorder only if their opponents started a fight, yet he thought that the town should be free to retain control of meetings if it treated all applicants equally. He therefore ruled that—until all meetings were forbidden—unionists should be given permits unless the meeting would interfere unreasonably with the public's use of the parks for recreation and with the use of the streets for traffic. Applications were to be made for permits three days ahead of time, but the town was to assume that they were legitimate and not

⁶⁶ *Hague v. C.I.O.* (1939) 59 Sup. Ct. 954. The decision was five to two. The five majority judges disagreed among themselves as to the constitutional basis of the decision. Roberts and Black based the decision not on the due-process clause of the Fourteenth Amendment as embodying by implication bill-of-rights limitations on the states, but on an extension of the privileges-and-immunities clause of the Amendment, which had hitherto been very narrowly construed. This clause had not been mentioned in the lower court. Stone and Reed criticized this basis, among other reasons because it gave relief only to citizens. Also, to get relief it would be necessary to show that one was trying to distribute leaflets or hold a meeting about some federal matter. In this case the C.I.O. said that it was trying to meet to explain the National Labor Relations Act. Since Hughes took the position of Stone and Reed, and since the two new judges (Frankfurter and Douglas), who did not vote, probably felt the same way, it may be that a future case will give the opportunity to rest such a decision on a broader ground.

place "any previous restraint" on the applicants. On the contrary, it was the town's duty to furnish the applicants police protection against the disorder that their opponents might create, though this duty would be ended if the speakers used "words or conduct . . . in violation of existing law."

On appeal, the Circuit Court said that it would *not* be constitutional to forbid *all* meetings, and that "even if we were to assume that the ordinance . . . is valid . . . , none the less we find that it has been administered in a discriminatory and therefore unconstitutional manner." The Supreme Court went further and declared the ordinance wholly void, so that unionists were "free to hold meetings without a permit"; the courts were not to "rewrite the ordinance." Butler's dissent referred to the Court's ruling forty years before that Boston Common could not be used for speaking if the state did not want it to be. McReynolds's dissent said that the C.I.O. should have gone to the state courts first.⁶⁷

A month later, in July, 1939, after conference with the C.I.O. and the American Civil Liberties Union, the Jersey City commission passed a new ordinance allowing assembly everywhere in the city except at a few congested spots. Permits are still required as well as twenty-four hours' notice, which Mayor Hague stated was simply to permit the reservation of particular street corners. He did not explain the permit requirement.⁶⁸

An aspect of the freedom to assemble which was raised but not disposed of in this litigation was the question of whether organizations could hire halls for meetings. In some cases owners of halls would not rent to unions for fear of possible reprisals by the city administration. There was also an ordinance which forbade the owner of a hall to rent it without a permit from the chief of police for a public meeting at which speakers would speak about or advocate obstruction or overthrow of the state or federal government. The C.I.O. complained that Mayor Hague had invoked this ordinance against them by labeling them Communists.⁶⁹ In 1937 Vice-Chancellor Fielder of New Jersey had granted an injunction against this ordinance, on the ground that "otherwise there is practically no limit to what meetings the police may prohibit," and that the owner could not predict the content of all speeches. Later he granted an injunction against the police of Union City, New Jersey, who had forbidden a May Day meeting in a private hall, apparently without even the justification of an ordinance. He advised the police to wait till seditious words were spoken and then to bring the offender to court.⁷⁰

⁶⁷ The New Jersey Supreme Court had refused to require the issuing of a permit to Norman Thomas under the Jersey City ordinance. *Thomas v. Casey* (1938) 121 N.J.L. 185.

⁶⁸ *The New York Post*, July 8, 1939, p. 6.

⁶⁹ Bill of complaint in *Hague v. C.I.O.*, as reported in Justice Roberts's opinion (1939) 59 Sup. Ct. 954.

⁷⁰ *Hudson County Committee of the Communist Party v. Hague*, reported in (February

Sit-down strikes. A special union method intended to cut the company's labor supply is the sit-down or stay-in strike which became popular with unionists in the unionizing strikes of 1936-37 but was used little after that.⁷¹ It had already been the chief weapon of the United Rubber Workers in Akron, and it became nationally known at New Year's in 1937 when General Motors was paralyzed by it. Within a short time the sit-down strike spread to other auto plants and to other industries.⁷²

Once having found the sit-down successful, union members in a single department of a given shop were inclined to use it whenever they thought the company was not living up to its agreement, even though in theory all differences were capable of settlement by negotiation and under the contract any strike was taboo; in most of these cases the union had not authorized a strike. This practice of irresponsible unionists provided an occasion for attacks on unions and especially on the C.I.O. unions, which were accused of not living up to their agreements. These attacks were directed against "wild-cat" (unauthorized) strikes in general but the picture was made blacker by the fact that the strikes were sit-downs, for the earlier and bigger sit-downs had been built up into a gigantic bogey by employers, many of whom said America had abandoned law and order altogether.⁷³ The A.F.L. joined in the cry by denouncing sit-downs, as a part of its campaign against the C.I.O.

The presence of the strikers within the plant makes it impossible for the company to use strikebreakers, unless it can pry the workers loose by sending company guards or police, perhaps using gas, or by threatening legal penalties. In order to keep out guards or police, the sit-down strikers, when they

1937) 5 I.J.A. 84. *United Front May Day Committee v. Jenkins*, reported in (May 1937) 5 I.J.A. 134.

⁷¹ Of all strikes in the United States in 1936, 2 per cent were sit-downs (workers involved were 12 per cent of all); this type of strike in 1937 accounted for 10 per cent (workers, 20 per cent—in the first four months 43 per cent); in 1938, 2 per cent (workers 4 per cent). These figures are derived from data of the United States Bureau of Labor Statistics, published by the National Labor Relations Board in a *Report*, in April, 1939, to the Senate Committee on Education and Labor, pp. 321, 330. The Board (p. 21) says that the sit-down is "predominantly an organizational weapon," and it is true that the better organized a plant is, the less need there is for the union to use the sit-down method. Apparently the sit-down was a 1937 phenomenon because 1937 was an organizing year and because sit-downs became the fashion. But they are not wholly confined to unionizing purposes, any more than other strikes are. In 1936-38 the proportion of sit-downs called for union organization purposes was 54 per cent of all sit-downs; the number of strikes called for organization purposes was 58 per cent of all strikes. Measured by number of workers involved, the proportions were 68 and 60. (Pp. 323 and 330.)

⁷² See J. Seidman, *"Sit Down!"* League for Industrial Democracy. New York. 1937; E. Levinson, *Labor on the March*. Harper & Brothers. New York. 1938. Chaps. 7-8; J. R. Walsh, *C.I.O.*, W. W. Norton & Company. New York. 1937. Pp. 175-184; M. H. Vorse, *Labor's New Millions*. Modern Age Books. New York. 1938. Chaps. 5-7; L. Adamic, "Sitdown." *The Nation* (Dec. 5 and 12, 1936). Vol. 143. Nos. 23 and 24. Pp. 652-54 and 702-4.

⁷³ See, for instance, *Sit-down*, booklet of the Automobile Manufacturers' Association containing evidence presented July 27, 1939, before the Senate Committee on Education and Labor by W. J. Cronin, apropos of the proposed amendments to the National Labor Relations Act.

could and when their strike covered many departments, have seized the factory doors and let in only sympathizers. If the strike is to last for more than a few hours, food, drink, and sleeping places must be provided by the union and lines of communication with the strikers must be established and maintained.

In the General Motors sit-down of January and February, 1937, the newly elected governor of Michigan, Frank Murphy, refused to send the state police and militia into the plants to oust the strikers. He apparently felt that to do so would result in a bloody battle; there were, in fact, sharp encounters with the city police of Flint when the latter tried to enter.

In order to ensure the co-operation of the police and the militia General Motors at once asked for and obtained an injunction from Judge Edward Black. But the injunction was a boomerang, for the union was able to show that the judge owned \$150,000 worth of stock in the company. Another was obtained from Judge Paul Gadola, who stated that even peaceful picketing was illegal in Michigan. But his order had much less effect than did two other occurrences at about the same time—assaults on U.A.W. and C.I.O. organizers in Bay City, Saginaw, and Flint and (on the other side) a carefully planned union coup which extended the sit-down to the key motor-assembly plant, Chevrolet No. 4. The Chrysler Company's injunction, in its strike which occurred soon after this, was likewise ineffective.

Sit-down strikers were ousted, by the police, in some cases when the store or plant was not large. In Detroit, during and after the big auto sit-downs, there were many small ones in different industries which the police broke up. Later, in a sit-down attempted at the Hershey chocolate plant in Pennsylvania, the participants were ejected and the leaders brutally attacked. The company let it be understood that the strikers had been spontaneously resisted by nonstrikers and by neighboring farmers who counted on selling the company their milk, but there is evidence that the company planned the maneuver. The police "did not hear about it" until too late.

When sit-down strikers at the Douglas Aircraft Corporation plant in Santa Monica, California, were told that the National Labor Relations Board would hear their grievances, they left the plant and were arrested for forcible entry. Of the 287 men indicted, 22 leaders were tried. The first jury disagreed, but the second found them guilty of conspiracy.⁷⁴

In North Chicago during a sit-down at the Fansteel Metallurgical Company in February, 1937, Judge Dady (who later issued the Chicago Hardware injunction reported above) ordered the men out. The next day 150 deputy sheriffs unsuccessfully fought two hours to eject them with tear gas. The company's lawyer saw the advantage of forcing an entrance through the upper stories. From a tower erected on an armored truck the deputies threw

⁷⁴ (January 1938) 6 I.J.A. 85.

tear gas and vomiting gas into the second story, and though the men resisted they were ejected. Contempt sentences ranging from 240 days and \$1,000 fine to 10 days and \$100 fine were imposed on 39 men.⁷⁵

The union men who were not rehired pressed their case for reinstatement before the National Labor Relations Board on the ground that the company had refused to bargain collectively with a majority union. The company's defense was that the men had sat down, and the Supreme Court validated that argument in 1939, calling the sit-down "a high-handed proceeding without a shadow of legal right."⁷⁶

In 1939, also, the Apex Hosiery Company lost a suit under the Sherman Act against the Hosiery Workers, who had carried on a sit-down and damaged machinery (discussed below).

The 1937 antiunion drive made use of the fact that sit-downs were frequent. The United States Senate condemned them. Tennessee and Vermont passed special laws against sit-downs. Massachusetts, in passing a labor relations act, added a rider against sit-downs. The sit-down was little used after 1937 and thus became less important in antiunion propaganda. In 1939 Minnesota and Pennsylvania banned sit-downs as part of their labor relations legislation, mentioned under "Picketing laws," above.

Is the sit-down illegal? As we have just seen, the judges of the country say so.⁷⁷ One may re-examine the question by asking how the sit-down is related to another strike method, mass picketing. In both mass picketing and sit-down strikes, the strikers claim that they are simply there, but in each case there is an unspoken intention to resist with force if strikebreakers try to enter the plant. The strikers look on this as self-defense, but it does not come within the court's definition of self-defense. The two weapons differ in at least one respect. "Mass" picketing grades down from overwhelming numbers to so few that they inspire neither shame nor fear in the strikebreakers, who may go through the picket line in company autos and accompanied by guards. A sit-down, on the contrary, can conceivably keep out strikebreakers even if only a few men have taken over the plant.

Unions point out that the sit-down is an instrument of peace, since its alternative, picketing, often leads to rioting. This is a good argument if

⁷⁵ (July 1937) 6 I.J.A. 2. The tower resembled ones used by the soldiers of Julius Caesar. The newspapers incorrectly called it a "Trojan horse."

⁷⁶ *National Labor Relations Board v. Fansteel Metallurgical Corporation* (1939) 306 U.S. 240 (discussed in Chapter 31). In effect the Court ruled that the unionists "came into court with unclean hands" and therefore should be denied government aid. On the same day the Court refused to review the decision of the Illinois courts against the sit-downers. In that injunction case the union had pleaded unsuccessfully that the company had violated the N.L.R.A. and so came into court with unclean hands. But see the dissent in *N.L.R.B. v. Fansteel*.

⁷⁷ Dissent has come from two law school deans: James Landis of Harvard, in *The New York Times*, March 21, 1937, and Leon Green of Northwestern, "The Case for the Sit-down Strike," *The New Republic* (March 24, 1937). Vol. 90, No. 1164, pp. 199-201.

one assumes that the union is going to keep out strikebreakers in any case, or if the union can show that in most cases the company or police force is responsible for the rioting. The latter is often true, but it is hard to prove, for if a group of pickets is large it is always under the imputation of intimidating strikebreakers, and so police attacks on it are easily justified.

Andrew Carnegie once said that a struck company should not employ strikebreakers,⁷⁸ though this did not prevent him from permitting the quite different methods used by his lieutenant Frick in the Homestead strike of 1892. In most British strikes, and in strikes in the well organized industries in the United States, employers do try not to use strikebreakers but count on the hardships of the strike to make the union men willing to settle. The plant stays closed till they do.

This closing down is the aim of both picketing and sit-down striking. If American judges had not come to accept strikebreaking as an almost inevitable part of any strike, they would listen more sympathetically to the union's plea that the strikers have a "property right" in their jobs which overbalances the claim to governmental aid made by the company and by the strikebreakers.

This argument appears in a somewhat different light where the strikers are a minority and the others wish to work.

These people are not outsiders like ordinary strikebreakers. The union may say that they are blind to their own interest, and investigation may show that the company has intimidated them or that they would have joined the union later. But to set up a general rule that a plant must be closed whenever a minority wishes it would be a revolutionary step.

Union violence and the Sherman Act. The Sherman Act threatens labor unions chiefly because it can be interpreted to make illegal certain peaceful actions, such as boycotts and strikes aimed to extend unionization, which are often quite legal under state law. But it has also been used as a special sort of defense against union intimidation or violence. State law already forbids violence, but the federal courts have had a reputation for strictness in labor cases so that the company lawyers have tried to get their cases before federal courts by establishing diversity of citizenship or by claiming a restraint of interstate trade in violation of the Sherman Act. In damage suits, moreover, the Sherman Act holds out the possibility of collecting triple damages.⁷⁹

Two important railroad strikes led the Department of Justice to secure injunctions based in part on the Sherman Act: the Pullman strike of 1893

⁷⁸ "My idea is that the Company should be known as determined to let the men at any works stop work; that it will confer freely with them and wait patiently until they decide to return to work, never thinking of trying new men—never." *Autobiography of Andrew Carnegie*. Houghton Mifflin Company. Boston. 1920. p. 231.

⁷⁹ For other reasons for using federal courts, see Edward Berman, *Labor and the Sherman Act*. Harper & Brothers. New York. 1930. P. 210.

and the shopmen's strike in 1922. In both cases stress was laid on the violence used, but since persuasion was also forbidden it seems likely that the judges concerned would have viewed any far-reaching railroad strike as an unreasonable restraint on commerce. Moreover, in the former case the strike was the less respectable for being sympathetic; the latter was said to be "against the Railway Labor Board."⁸⁰

The Sherman Act also provides for criminal penalties; and the 1922 railroad strike was the occasion for several successful prosecutions which might have been brought under state law instead: for assault, burning cars, putting emery dust in locomotives, and placing lye in the shoes of an employee.⁸¹ The charge in all Sherman Act cases is conspiracy to restrain interstate commerce. Combined action is an unlawful conspiracy if either the purpose or the means are unlawful. In these cases the means were violent and unlawful. Interstate commerce was involved because railroads—the instruments of commerce—were affected.

At the time of the shopmen's strike the railway clerks struck on the Chesapeake and Ohio. The unionists were enjoined from intimidating, insulting, or interfering with employees. A barber was fined \$200 for contempt for putting a sign in his window that read: "No scabs wanted here."⁸² His words no doubt approached the "opprobrious epithets" which courts often forbid pickets to use; but the court seems to have acted in this instance because it found the strike to be an unlawful conspiracy which the barber was abetting.

Federal injunctions sought by companies on the plea of diversity of citizenship are theoretically issued under the law of the state where the plant is located, but companies have gone to federal judges partly because the judges did not take this rule very seriously.⁸³ One might suppose from this that in Sherman Act injunctions (open to employers since the Clayton Act of 1914) the federal judges would have taken full advantage of the law of conspiracy to forbid all acts, however peaceful, after it was once established that the strike was a conspiracy in restraint of interstate trade. However, in many cases the federal courts, having secured jurisdiction by an application

⁸⁰ *Ibid.*, pp. 65, 144. See also Frankfurter and Greene, *The Labor Injunction*, pp. 62-63, 253-63, which compares the two complaints and the two injunctions in detail. The results would no doubt have been the same without the Sherman Act, for other statutes were cited too. *Ibid.*, pp. 6-7.

⁸¹ Berman, *op. cit.*, pp. 296-99. Also for inducing crews to abandon trains and inconvenience passengers. *Ibid.*, p. 295. A similar case had occurred just previously. In a steel strike pickets who stopped a truck were sentenced to jail, since the truck was bound for another state and the jury found there had been intimidation. *Ibid.*, pp. 147-49. Violence by New York City truck drivers was prosecuted in 1938. *U. S. v. International Brotherhood of Teamsters* (1938) Commerce Clearing House Labor Law Service, Par. 18,219.

⁸² Berman, *op. cit.*, pp. 146-47. The barber demanded a jury trial, under the Clayton Act, but it was refused since his contemptuous act did not also constitute a crime. The Norris-LaGuardia Act of 1932 was passed too late to give him a jury trial.

⁸³ Frankfurter and Greene, *op. cit.*, pp. 11-15.

of the Sherman Act, have behaved about like state courts and have forbidden only violence and intimidation.⁸⁴

Beside injunctions and indictments the Sherman Act permits damage suits. In both state and federal courts damage suits against unions and unionists have been relatively rare.⁸⁵ The obstacles to bringing them include the difficulty of measuring accurately the money value of the injury to the company, the impecuniousness of the union or its members or both, and, in most states, the need to sue the members individually, according to the traditional law relating to unincorporated associations. It is necessary to show that the union is responsible for the unlawful acts which have occurred and probably to show that the membership has ratified them at least to the extent of accepting benefits that flow from them. We shall see later that the difficulties in the way of damage suits have made judges feel free to grant injunctions against unions to prevent the injuries which might call for damage suits.⁸⁶ The fact that injunction suits do not require a jury, as damage suits do, is another reason why employers prefer them.

The well-known damage suit against the Danbury Hatters was based on the claim that a boycott, even if peaceful, was illegal. This type of claim, made in injunction suits, too, will be considered later. Here we are concerned only with damage suits based on the complaint that the union's means were violent.

The labor cases in which damages of any size have been sought have been brought under the Sherman Act. In these cases the company has to show some relation between interstate commerce and the union's action. Unless transportation is involved, this can be done more plausibly in the case of a boycott like the Danbury one than in the case of strike violence. The Coronado Coal Company found this out when it tried to utilize the weapon which the Danbury decision put in its hands.⁸⁷

⁸⁴ Berman, *op. cit.*, pp. 207-11.

⁸⁵ E. E. Witte, writing before 1932, spoke of 314 suits and recorded 66 in which damages were recovered from unions or their members, to an extent falling considerably short, however, of the legal expenses of the 314 suits. *The Government in Labor Disputes*. McGraw-Hill. New York. 1932. Pp. 138-39, 148.

⁸⁶ Injunctions may be obtained by suing representative members or officers. E. Oakes, *The Law of Organized Labor*, Lawyers Co-operative Publishing Company, Rochester, 1927. P. 121. Damage suits are possible in 19 states which have passed laws under which unions can be sued as entities or through representative members or officers. *Ibid.*, pp. 110 ff. The law of the responsibility of unions for their "agents" and of members for the acts of their union is reported *ibid.*, pp. 49-51, 97 ff. It is often unnecessary to show that the union members who are held responsible knew of the unlawful acts, as long as they had an opportunity to know (as in the *Danbury Hatters' Case*) or if the whole strike is considered to be a conspiracy after unlawful methods have entered it (as in the *Debs-Pullman-Strike Case*). Witte, *op. cit.*, p. 147, note 1. The Norris-LaGuardia Act (Section 6) increases the degree of proof of "authorization" in federal cases. See Chapter 29.

⁸⁷ The following account is based on the Coronado Cases (1922) 259 U. S. 344 and (1925) 268 U. S. 295; Berman, *op. cit.*, pp. 119 ff.; and Witte, *op. cit.*, pp. 136 ff.

The company, operating in Arkansas, broke its agreement in 1914 with District 21 of the United Mine Workers. After the union struck, the company reopened a mine under the protection of guards and of a federal injunction. When the union resisted, the company brought contempt proceedings. The unionists then attacked the properties and destroyed them with dynamite and fire, killing several nonunion employees. Suing both the national and the district union for triple damages, the company was awarded nearly \$750,000. The case reached the Supreme Court in 1922. A conspiracy was shown to have existed, since the means had been violent, but to bring the union under the Sherman Act the company had to show that the union had intended to restrain interstate commerce in coal, that is, to control the supply or the price. The Court found that the evidence was insufficient to hold the union.

Though it was not necessary for this decision, the Court declared that unions (that is, their treasuries) were suable, that it was not necessary to sue the members as individuals. Strictly speaking, this statement applied only to the federal antitrust law, but it ran in general terms and the federal courts have since then accepted suits against unions in their own names in all sorts of cases.⁸⁸

Though unions for many years have been giving more and more power to their national organizations, the Court found that the districts of the United Mine Workers retained a power to strike without the consent of the national union if they were willing to forego financial aid from the latter. Though it was not necessary for its decision, the Court found that the strike against Coronado was not authorized by the national, but that District 21 was responsible for what happened. Since the national union had money in the treasury and the district did not, the company was not pleased, although the Court's basic decision seemed to make the question of who had money an academic one.

The company lawyers persisted, however, and introduced new evidence to show that the union leaders were conscious of the probable effect of non-union competition on wages and prices, and that the strike was one step in a program of eliminating that competition. As a result of this new evidence and argument, the Court, in 1925, decided that the Act applied after all. Since the district had no money, the company settled for \$27,500, a small part of its court costs. But the principle had been established that an attempt to unionize an entire industry was a restraint of interstate trade. This re-

⁸⁸ But federal damage suits against unions did not increase noticeably nor did injunction suits decline. And, according to Witte, *op. cit.*, p. 144, during the following ten years courts in states not permitting damage suits against unincorporated associations continued to follow the same rule, despite the Supreme Court.

straint could be labeled illegal if some violence were found to be associated with it.⁸⁹

A damage suit much like the Coronado suit had been brought against District 21 in 1915 by the Pennsylvania Mining Company of Arkansas. Though the company got an award of \$300,000, the union at one time escaped because the first Coronado decision had been handed down, at another because a jury was divided; and in 1929 the company dropped the whole matter. When unionists, in the "Herrin massacre" in 1922, killed twenty-two nonunionists and destroyed the mines of the Southern Illinois Coal Company worth more than \$200,000, the company threatened to sue District 12 of the United Mine Workers for triple damages. The union bought out the company out of court for about \$700,000, triple the value of the property.⁹⁰

The threat of damage suits—especially under the Sherman Act—was revived in 1939 by the Apex and Republic cases, both based on union violence.

In Philadelphia in 1937 Branch 1 of the Hosiery Workers' union captured the plant of the Apex Hosiery Company, which had refused to negotiate. The company asked for a federal injunction on the ground that interstate commerce was being restrained by illegal means. The District Court refused, but the Circuit Court granted the request, stating that the definition of interstate commerce had been broadened, because the Supreme Court in 1937 had held the National Labor Relations Act constitutional. It was no longer necessary for the company to show that the union intended an interruption of production to affect wages and prices. This did not mean that *every* restraint or interruption of commerce was illegal. In this case the illegality was supplied by the violent means used, namely the sit-down, plus damage done to machinery. The union appealed to the Supreme Court, and there, in 1937, the injunction was canceled on the ground that the strike was over. The company meanwhile signed a closed-shop agreement, but it saved its right to sue for damages, and in 1939 it obtained an award of \$712,000 as triple damages under the Sherman Act as interpreted by the Circuit Court in the injunction case. The damages were based on profit that might have been made during the strike and on the cost of replacing damaged equipment.

The Apex decision renewed the alarm of labor unions, whose lawyers told them that it seemed to authorize damage suits whenever a strike was stained with any violence at all. These suits could be brought under the

⁸⁹ Even in the absence of violence, the Sherman Act has been applied against organizing drives. See "Boycotting through Consumers and Retailers" and "Sympathy Strikes," in Chapter 28, below. The doctrine that union activity restrains trade (a public or criminal wrong) was used a century ago in the United States. The passage of the Sherman Act gave it a new lease on life. It has been argued that the doctrine was founded on a misconception. L. B. Boudin, "The Sherman Act in Labor Disputes" (January 1940) 40 Columbia Law Review 14, 32-33.

⁹⁰ Witte, *op. cit.*, p. 140.

federal antitrust law (for triple damages), since the Apex decision went even beyond the Coronado one. Where the Coronado decision had applied to strikes connected with a national unionization drive, in the Apex case it was asked only if interstate shipments were substantially interrupted. The company could apparently recover three times the losses caused by the union's peaceful and violent activities combined.

However, when the case reached the Circuit Court of Appeals at Philadelphia, all three judges were new and they proceeded to upset their predecessors' 1937 decision and to announce that it was still necessary under the Coronado decisions, to show intent to affect prices.⁹¹

This chapter first stated what sorts of help employers and unions expect or demand from the government and then went on to describe governmental aids to employers. The chief aim of employers has been to prevent unionists communicating to other workers either arguments about the value of unionism or demonstrations of their attachment to it. Their second aim has been to prevent unionists intimidating other workers. The first aim is usually accomplished under cover of the second. When an employer tries to discourage employees from opposing his will, his ability to command the services of government is as important as his power of discharge.

Deferring until Chapter 28 the legal bans on peaceful picketing and other communication in cases of boycott and of strikes with unlawful purposes, we noticed that in ordinary labor disputes picketing is the heart of the strike and receives the most legal attention. Injunctions are a frequent legal weapon against picketing, but pickets and organizers are also arrested under vagrancy and disorderly-conduct laws. The law is easily abused and prevention of violence easily becomes infliction of violence. In some cases it is not a question of arrests but of a battle between pickets and police or militia or vigilantes.

Special consideration was given in the latter part of the chapter (1) to communication by distributing leaflets and holding meetings, communication of revolutionary ideas, and the codification of antipicketing laws, usually in such a way as to ban communication, (2) to sit-down strikes, and (3) to

⁹¹ *Leader v. Apex Hosiery Company*, Circuit Court of Appeals, Third District, Nov. 29, 1939. The case went to the Supreme Court. The Company was also pushing a suit for \$1,026,000 damages in the state courts, both against the union and against the county officials who were said to have failed to furnish protection. On the strength of the award of damages to the Apex Company, early in 1939, the Republic Steel Corporation had filed a suit for \$7,000,000 damages against the C.I.O. and the Steel Workers, based on various acts of violence charged against the union during the Little Steel Strike of 1937. The occasion for the filing of the suit was the reapplication of the union to have the company reinstate the strikers with back pay under the National Labor Relations Act (see Chapter 31). This claim of the union was later upheld by the Circuit Court of Appeals, which put the blame for the strike on the company. The same interpretation, if put on the strike in the company's damage suit, might in some measure serve to excuse the union's use of violence.

the use of the antitrust laws against union violence or intimidation. We saw that, though judges are now interpreting the federal Constitution as guaranteeing freedom of communication, there are renewed attempts to limit that freedom by state legislation and by interpretation of the federal antitrust laws. The general expansion of federal power thus carries some disadvantages for employers and some advantages.

The next chapter will continue the description of governmental aids to employers against unions, with special reference to boycotts, and the next will continue it by pointing out situations in which the government now refuses its aid. After that we turn to governmental aids to unions.

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QUESTIONS

1. Books II-IV described incidents in which employers received help from various governmental agencies in their fight against unions. How would you classify the different sorts of aid mentioned?
2. What are the different sorts of union action against which employers seek government aid? Against which they do not seek government aid? Classify them as sources of annoyance to employers.
3. What different ways of legal attack does a company have?
4. What police measures are needed to stop illegitimate picketing?
5. To what extent was the function of the police the same in the "Memorial Day Massacre" and in the Chicago hardware strike?
6. Is the militia more than an augmented police force?
7. To what extent are the functions, methods, and responsibility of police, company guards, and vigilante groups the same?
8. How is a sit-down similar to mass picketing? How does it differ from it?
9. Explain whether or not workers have a property right in their jobs. Is the notion that they do have one invoked to justify union actions?
10. Assume that government ought to lay no previous restraint on speaking. What antiunion ordinances would remain valid?
11. Do police excesses continue because people do not know about them or because they approve of them?

BOYCOTTS

AND

28

OTHER SUSPECT PROJECTS

THE previous chapter has described the limits which government has placed on union communication and intimidation. This is one form of governmental aid to employers. There is a second type, which is based on the notion that a certain strike or boycott is illegal in its entirety and that therefore neither peaceful picketing nor any other measure to advance it should be allowed. Of such union projects claimed by employers to be fundamentally unlawful, the chief types are strikes in violation of collective agreements; strikes in essential industries; strikes for purposes said to be unlawful, especially closed-shop strikes; unionization drives looked on as conspiracies in restraint of interstate commerce; picketing, not as part of a strike, but to unionize; picketing a retailer to cause him to stop buying from a company which the union wants to unionize; and refusals to handle non-union materials, and other sympathetic strikes. These last three are boycott cases. General strikes are a form of sympathetic strike. Governmental restraint on these seven sorts of project is the subject of this chapter.

When a union project is held to be wholly illegal, all picketing, however peaceful, may be banned. Leaflets, "unfair" lists, secret visits to workers, and other methods of persuasion may be forbidden too. Injunctions have been issued to prevent the use of union funds for illegal unionization and to compel union officers to call off an illegal strike, but this sort of order seems to be a thing of the past. It would be logical to order strikers back

to work if their strike is illegal, but general considerations of liberty as well as the Thirteenth Amendment prevent this, as, in the twentieth century, they have prevented injunctions forbidding the men to quit by concerted agreement.

In practice, American judges have usually not issued sweeping orders but have limited their injunctions to forbidding violence and intimidation, which, to be sure, are also covered by the criminal law. Fewer suits were successful that were based only on the claim that the whole project was illegal. As we shall see, this tendency was increased by the passing of anti-injunction laws, which largely legitimized peaceful picketing and so confined companies to complaints against intimidation. But it is still important to discuss the legality of these suspect projects, for many states do not have anti-injunction laws and in those that do, damage suits may still be brought. Also, judges are inclined to interpret those anti-injunction laws narrowly so as to be able to continue to condemn union projects of which they disapprove. (See also Chapter 29.) Moreover, the police may suppress all picketing even though no judge has authorized them to do so.

BREACH OF CONTRACT

Courts often declare strikes illegal when they are called before the collective agreement has run its full term. Are these labor contracts like business contracts? Businessmen live up to their contracts not simply because they fear lawsuits but because they know that if they do not, other businessmen will refuse to deal with them. They live up to them also because the fulfillment of promises is esteemed in our society. Anglo-American law helps enforce business contracts by threatening to assess money damages against the party that breaks one. Sometimes a party to an agreement asks for an injunction to compel the other to fulfill the terms of the business contract on penalty of fine or imprisonment for contempt of court but injunctions are rarely granted. We shall see that in labor contract cases, however, injunctions have been frequent.

In some European countries collective labor agreements, too, are enforced by assessing damages and in some cases even by criminal prosecution. In contrast to this system the British and American tradition has been not to take collective agreements to court; judges have been reluctant to enforce them. If they have been lived up to, it has been because neither side wanted to go through a strike or earn the reputation of irresponsibility. If one side was strong enough not to mind a strike, it might break the agreement, though it was pretty sure to accuse the other side of breaking it first.

In the United States, there is today a noticeable trend in the direction

of Continental European practices. Agreements are being enforced more and more, not so much by damage suits as by injunctions.¹ Most suits are brought by employers rather than by unions. Typical cases are those of the Greater City Plumbers of New York, in which a court in 1937 told the union to make no move to continue the strike even though the court did not forbid the members to quit their jobs individually,² and of the Airline Coal Company, in which the supreme court of Iowa in 1933 took an opposite view and refused to issue an enforcement order.³ Courts nowadays seem to be fairly ready to uphold the claims of individual workers made on the basis of collective agreements.⁴

Special cases. A special case is the charge that a union has agreed to arbitrate and then refused to do so. A lower Pennsylvania court in 1935 issued an injunction in such a case despite the workers' plea that, having left the union which had made the arbitration agreement and joined another one, they should not be bound by the old agreement. Twenty-nine of them were later found guilty of violating the injunction.⁵

Another special case is that in which a union strikes in sympathy with another, and in doing so violates its agreement. If its members work in the same building, they may allege that they are afraid to go through the picket line, as the typographers and pressmen did when the reporters struck on the Seattle *Post-Intelligencer*. In Sweden most collective agreements reserve the unionists' freedom to strike in sympathy, and though the law forbids strikes in violation of agreements it permits sympathetic action if it is in support of a lawful strike by another union.⁶ In the United States sympathetic strikes are of doubtful legality, a fortiori if they violate agreements. Yet in 1939 the San Francisco water-front arbitrator decided that refusal to go through a picket line was a "basic tenet of unionism" and as such was by implication

¹ Practices differ in different states and even in different courts in the same state. See T. R. Witmer, "Collective Labor Agreements in the Courts," Dec. 1938, 48 Yale Law Journal 195-239, and material cited there.

² *Ibid.*, p. 207.

³ *Wilson v. Airline Coal Co.* (1933) 215 Ia. 855.

⁴ M. F. Hamilton, "Individual Rights Arising from Collective Labor Contracts" (June 1938) 3 Missouri Law Rev. 252-74. In various cases nonmembers have been able to claim the benefit of existing practice as crystallized in a union agreement. This tendency may grow because of the clause in the National Labor Relations Act which gives the majority union power to bargain for the whole unit of workers. Unions have been condemned by the federal Supreme Court for striking for back wages said to be due under the agreement, when the courts were open for redress. *Dorchy v. Kansas* (1926) 272 U.S. 306.

⁵ (February 1935) 3(9) I.J.A. 2; (July 1935) 4(2) I.J.A. 3. The C.I.O. secessions from the A.F.L. repeatedly raised the question what status was to be given the existing contract; the men usually wanted to retain it. On enforcement of agreements to arbitrate, see Witmer, *op. cit.*, p. 208, note 45.

⁶ *Report of the Commission on Industrial Relations in Sweden*. (U.S. Department of Labor.) Government Printing Office. Washington, D. C. 1938. P. 5.

part of the agreement, even though the agreement provided explicitly against stoppages.⁷

A company may find it useful to charge that a union broke its agreement when the union is trying to sue the company and the company thus may be able to escape the suit by showing that the union "comes into court with unclean hands." Suits which unions might bring and which might be prevented in this way are suits for breach of contract and suits before labor relations boards. The Supreme Court upheld such a defense by the Sands Manufacturing Company in a labor relations case in 1939. (306 U. S. 332.)

Employers often complain that unions break agreements because they cannot be held legally, though we have just seen that there are legal limits on their breaking agreements. These limits rest partly on the fact that, in both injunction and damage suits, unions are becoming more suable for all sorts of wrongs, as we saw in connection with the Sherman Act. Though suability is growing, there is a perennial demand that unions incorporate so that they will be made even more suable. This demand fortifies the propaganda which alleges that unions constantly break agreements (implying that companies do not) and that C.I.O. unions especially do so. Thus the stoppages in General Motors plants during the first months after the agreement of 1937 were cited by steel companies during the steel strike of 1937 as a reason for refusing to sign any written agreement. The C.I.O. was well aware of the problem and, despite the newness of its unionization in United States Steel, it was able to prevent unauthorized strikes there, as it is in most industries.

One mechanism for restraining strikes during the life of an agreement is fixing ahead of time a penalty for violation. During the World War the United Mine Workers had to accept a penalty of \$1 a day per man, the proceeds going to the Red Cross. This clause stayed in the contracts after the War though it was not used. In 1939 there was a nation-wide strike because the soft-coal operators would not accept the union's demand either to repeal this clause or to grant the closed shop (with an open union). In the final settlement most operators preferred to accept the closed shop. In Harlan County, Kentucky, however, the operators held out, finally settling for the abolition of the penalty clause and for the open shop, with the union the sole collective bargaining agent for the employees. Similar clauses have often been used by the clothing industries but usually as a device to bind the small employer and not the union.

Employers have sought injunctions not only against breaches of contract but also against "inducing" employees to break an existing contract,

⁷(March 27, 1939) 4 Labor Relations Reporter 126.

A later decision, however, took the opposite view, forbidding the men to refuse to handle "hot cargo." (February 12, 1940) 5 Labor Relations Reporter 684.

that is, against picketing by one union where a rival union (sometimes a company union) already has secured an agreement.⁸ The number of occasions for complaints of this sort was increased by the A.F.L.-C.I.O. split. The court grants the injunction, when it does, on the theory that the agreement is a contract, and that it is wrong to induce workers to break it. In form this theory is the same as that on which injunctions used to be issued against union organizers who induced nonunion workers to break their "yellow-dog" pledges not to join.

Suits by unions. Union antagonism to the courts because of decisions in injunction and other labor cases has been so great that up to a few years ago most unions would not "recognize" the courts by bringing suits.⁹ Moreover they thought they were unlikely to win and that "recognizing" the judiciary might hinder them when they asked for legislation to limit its power. They are less reluctant to sue now that they are used to seeking governmental aid in such matters as fighting company unions and establishing social security.

Legal efforts of unions to force a company to adhere to an agreement have been successful in some cases.¹⁰ One of the best known was one in New York City, in which the judge ordered the company to come back from "out of town" or else shut down. This decision, however, applied only to a contract which expressly forbade moving, and in any event could not prevent the company from moving as soon as the agreement expired.¹¹ A New Jersey court has ordered a company to employ only union members in fulfillment of its closed-shop contract.¹² But the courts of Iowa, Michigan, and West Virginia do not recognize collective agreements.¹³

If a company has broken an agreement, a strike is likely to result and the company may then apply for an injunction of some sort. In this case the union's lawyer may claim that the company, having broken a contract, comes into court with unclean hands. The courts of Wisconsin and some of those in New York have accepted this argument; those of Massachusetts

⁸ F. Frankfurter and N. Greene, *The Labor Injunction*. The Macmillan Company. New York. 1930. P. 109, notes 110-112.

⁹ See E. Witte, *Government in Labor Disputes*. McGraw-Hill Book Company. New York. 1932. Pp. 231-34.

¹⁰ *Ibid.*, Cases 83 ff., includes seven injunctions against breach of agreements secured by unions 1929-31. Earlier cases are listed in E. Witte, "Labor's Resort to Injunctions" (1930) 39 Yale Law Journal 374.

¹¹ *Dubinsky v. Blue Dale* (New York, 1936) 162 Misc. 177. Cases on this and related points are collected in N. Witt, *Supplement to Landis' Cases on Labor Law*. Foundation Press. Chicago. 1937. P. 43. See Chapter 31 below, for National Labor Relations Board rulings to the effect that moving to avoid collective bargaining is an unfair labor practice.

¹² *Hudson Bus Case*, New Jersey, 1937, cited in Witmer, *op. cit.*, p. 201. New Jersey courts have not usually been so favorable to the closed shop.

¹³ Witmer, *op. cit.*, p. 201.

and Oregon have rejected it.¹⁴ If it is accepted, there will still be dispute about who broke the agreement first, since the legal tradition is that if one side breaks it the other side is no longer bound by it. However, in most labor situations, if there is a breach it is healed somehow and the contract is reinstated.

Since there are "open-shop" movements in which some employers are induced by others to fight unions and even to repudiate agreements, there might be suits by unions against "inducing" breach of contract. The 1921 depression led manufacturers of women's clothing in New York to agree that there must be a change in the terms of the contract they had signed with the union through their employers' association, before that contract expired. After the resulting suspension of work the union obtained from Justice (later Senator) Robert Wagner an order forbidding the association to induce the employers to break off their arrangements with the union. The judge described the situation as a conspiracy among the employers.¹⁵

This decision, upheld by the Appellate Division, was widely accepted as establishing the rule that a collective agreement was valid and could be enforced against whichever party broke it. The Appellate Court considered that the case was of this general nature: that the association had broken its agreement rather than that it was inducing employers to break their several arrangements. It rejected the association's argument that to make agreements enforceable (against unionists) would violate the legal tradition that the courts would not order the performance of specific personal services. It stated that an association and a union both had disciplinary powers over their members and that the court was merely requiring the association to use these.¹⁶

Arbitration awards are a special sort of collective agreement. The Railway Labor Act of 1926 provided for their enforcement by the filing of the award with the nearest court. There is no reason why arbitration awards should be more enforceable than other agreements; in fact it might discourage arbitration if they were especially enforceable. The railroad law was amended in 1934 to provide another mechanism for interpreting and enforcing all agreements. A bipartisan adjustment board was set up whose decisions are binding. If it fails to agree, an umpire is called in. These rules for the enforcement of arbitration awards and other agreements apply only to rail and air transport, but in discussions of the National Labor Relations Board it has sometimes been proposed that agreements be filed with courts and then enforced by them; or at least that arbitration awards be filed and enforced, especially if the Board is given power to arbitrate upon the request

¹⁴ Witmer, *op. cit.*, p. 207.

¹⁵ *Schlesinger v. Quinto* (New York, 1922) 117 Misc. 735.

¹⁶ *Schlesinger v. Quinto* (New York, 1922) 201 App. Div. 487.

of both sides. Such devices for enforcing awards do not constitute compulsory arbitration since the parties are not compelled to arbitrate.

The 1939 revision of the Wisconsin and Minnesota labor relations laws declared it an unfair labor practice to violate a collective agreement. These provisions were aimed chiefly at unions, though they applied to employers also.

Under the N.R.A. of 1933-35, agreements were sometimes made enforceable even on employers who had not signed them, notably in the coal industry. This device had already been used in some Continental European countries and was soon afterward applied to the British textile industry. It was a special type of N.R.A. code, and N.R.A. codes were, as we shall see, a special sort of protective labor legislation.

STRIKES WHICH STOP ESSENTIAL SERVICES

It has never been definitely announced that workers in public utility and other essential industries have less right to strike than others. Yet the attitude of judges, other public officials, and the public in cases in which public comfort or safety was involved or in which tradition forbade strikes has been different from their attitude in ordinary strikes.

Tradition is strongest in the Army and Navy, and unions as well as strikes are forbidden in these services. During a war, strikes of industrial workers are looked on as illegitimate. In the United States during the World War they were never definitely forbidden, though a few judges ruled against them. Many devices¹⁷ were used for avoiding them, including the practice, used by all belligerents, of sending agitators to the front. A coal strike as late as 1919 was resisted on the basis of the government's war power when the federal government obtained an injunction commanding the union to call the strike off.¹⁸

Even outside the armed forces and even in peacetime there has been great opposition to strikes by government employees. As a result of their strike in 1919 the Boston policemen all lost their jobs. A strike by sailors on the high seas is still mutiny just as it has been for centuries.

Government employees. All white-collar workers are slow to organize, and particularly public employees. Strikes of public employees are rare and judicial pronouncements are rare. In a 1914 strike a judge held that striking postal workers did not violate the statute making it a crime to obstruct the mails. In 1916 another group of strikers pleaded guilty of violation. Such

¹⁷ Agencies of adjustment are described in Alexander Bing, *War-time Strikes*. E. P. Dutton & Co. New York. 1921.

¹⁸ Edward Berman, *Labor Disputes and the President*. Longmans, Green & Co. New York. 1924. Pp. 178-85.

statutes are not found in most government employments but an effective deterrent to striking is loss of a secure job and, usually, of a pension. Similar deterrents, of course, exist in private employments, but the government has a stronger tradition against taking back strikers and probably could get anti-picketing injunctions more easily. Most unions of public employees renounce the strike in their constitutions in order to get members and to secure recognition from officials. They rely on their political strength to secure concessions. One authority on the subject justifies the general opposition to strikes by government employees by arguing that their services are essential to the public; another points to the fact that strikes by many types of private employees would inconvenience the public even more, and argues for freedom to strike, for most public employees.¹⁹

President Roosevelt in 1937, when there was increased unionizing among federal employees, announced that they had "no right to strike." This statement sounded like a promise of legal retaliation, but it functioned chiefly to consolidate public opinion against strikes of public employees. Roosevelt had occasion to repeat his statement in July, 1939, when many strikes were called by building trades unions against reductions in hourly rates on W.P.A. work. The general sentiment against these strikes was even stronger than against strikes by regular government employees, since W.P.A. was looked on chiefly as charity, quite the opposite of an essential service. The W.P.A.'s reply to the strikers was that their jobs were simply abolished (Congress having recently reduced the appropriation) or would be given to other relief applicants.

In Minneapolis many W.P.A. strikers were arrested when violence occurred in connection with this strike. A clause was found in the relief act which was interpreted to permit major criminal action against them. After the first group was convicted, the rest of the cases were dropped, early in 1940, with the statement that W.P.A. employees had now been clearly warned of their legal duties.

Employees of public utilities also avoid strikes, since they expect the public to react against being deprived of essential services. That utility employees, as well as public employees, may have political importance was exemplified in the passage of a new railway labor act by Congress in 1934. During the latter part of the World War Congress took over the railroads. In 1920, when it turned them back, it set up a Railway Labor Board. Though Congress did

¹⁹ Postal strikes and unionization: S. D. Spero, *The Labor Movement in a Government Industry*. Doubleday, Doran and Company. New York. 1924. Pp. 274 ff. Opposing freedom to strike: W. E. Mosher and J. D. Kingsley, *Public Personnel Administration*. Harper & Brothers. New York. 1936. P. 514. Favoring it: S. D. Spero, "Employer and Employee in the Public Service," Monograph No. 9 of the Commission of Inquiry on Public Service Personnel, in *Problems of the American Public Service*. McGraw-Hill Book Company. New York. 1935. Pp. 179-92. 231-35. Public employees sometimes argue that they should have the benefits of labor relations acts, especially if they work in "private" occupations like subway operation.

not forbid strikes, when the shopmen struck in 1922 not only did the Board hinder them in various ways but the Attorney General (and after him many railroads) got an injunction very elaborately forbidding all sorts of strike activities.²⁰

Merchant marine. An industry not far removed from public utility status is shipping. It is regulated partly because it is subsidized. Wages and working conditions are now among the subjects of regulations. The power of organized workers to alter their terms of employment is limited by the sea tradition that officers and crew are subject to the captain, especially when at sea, and by the custom of time contracts. While other workers are not forced to work out time contracts, even the Thirteenth Amendment did not take away the employees' right to have deserting seamen imprisoned. The La Follette Seamen's Act of 1915 did take away that right, but severe penalties still exist for mutiny, and on the surface at least a strike seems to be mutiny, or at least "willful disobedience" justifying the forfeiture of wages due, which have often been accruing for several weeks or months.

In 1934, when the S.S. "Texan" from the Pacific was in New York during the West coast strike, her men went out in sympathy, making their demands similar to the West coast demands. The company refused even to pay wages due, calling the strike mutiny and desertion. The federal district court, to which the men appealed, said the company should pay. It noted that the federal statutes gave the men the freedom to quit in the middle of their contract and the right to claim double pay if the company violated labor regulations such as hours and overtime, which it had done in this case; but since the men struck for things the master could not give, the court rejected their claim to double pay under the statute. It found no mutiny or desertion. The Circuit Court agreed, and the United States Supreme Court refused to review the case.²¹

Presumably the violation by the company would not justify the sailors' quitting when the ship was not safely in harbor.²² If this is made the sole test, then it is not illegal for the men to strike when the ship *is* safely in harbor. In 1936 the crew of the S.S. "California" struck while their contracts were in force and their ship was at the pier in San Pedro. They demanded equal wages for Atlantic and Pacific sailors, a demand which their union

²⁰ Frankfurter and Greene, *op. cit.*, pp. 62-63, 253-63. In 1938 the possibility of a nation-wide tie-up may have influenced the opinion of the railroad emergency board, which recommended no wage cut. A compulsory arbitration law was passed in Kansas and compulsory investigation laws were passed in Colorado in 1915 and in Minnesota and Michigan in 1939. These laws to some extent justified themselves by stating that they applied to industries "affected with a public interest," that is, to public utilities and other essential industries. These laws and those governing railroads are described in Chap. 30.

²¹ *Weisthoff v. American-Hawaiian Steamship Company* (1935) 79 F. (2d) 124; (1935) 296 U.S. 619.

²² *Hamilton v. United States* (1920) 268 F. 15, *certiorari* denied (1920) 254 U.S. 645.

had been negotiating with their employer, the International Mercantile Marine Company. The three hundred forty-seven men stayed on the ship and took care of it. After three days they agreed to sail, since Secretary of Labor Perkins promised an investigation and no discrimination. When the voyage and contract ended in New York, some men were fined several days' pay, several received discharge cards marked, as a warning to other employing companies, that they had "declined to report," and others were told not to apply to the company again. The company and the Department of Commerce both announced that the men had mutinied, but, after a brief had been filed on their behalf stressing that the ship had been in safe harbor, the Departments of Commerce and Justice dropped the charge. The crew made the same point as that made by the "Texan" crew: that the company had violated the statutory prohibitions against overtime, and so on, and had thus been the first to break the contract.²³

In 1937 the crew of the "Algic" refused to work with strikebreaking longshoremen at Montevideo, Uruguay, partly because they seemed haz-ardously incompetent and partly because of sympathy with the strike. The ship was not at the pier, but in safe anchorage ready to load from lighters. The captain phoned the recently established Maritime Commission, at Washington, which told him to put anyone who refused to work in irons. The captain told the men that if they went back to work the whole thing would probably be forgotten, and they did go back. But when they reached the United States they were charged with mutiny. Of the fourteen men tried, nine were given two months and five were fined \$50. The Circuit Court upheld the decision, which seems to have turned a good deal on the judges' impression that the ship was not safe because it was three-fourths a mile out, though they presumably also had in mind the inconvenience of replacing a crew in foreign waters and the bargaining power this fact gives the men.²⁴

THE CLOSED SHOP AND OTHER SUSPECT PURPOSES

Strikes are sometimes condemned on the ground that the union's aim or purpose is unlawful. As with other union projects which have been held to be basically illegal, the result may be an injunction forbidding even peaceful picketing. The most frequent charge is that the union is demanding a closed shop.

²³ V. H. Rothschild, II, "The Legal Implications of a Strike by Seamen" (May 1936) 45 Yale Law Journal 1181-1200. He argues that freedom to strike would encourage seamen to protest when a boat is unseaworthy, as well as when labor conditions violated the law or were otherwise objectionable.

²⁴ *Rees v. U.S.* (1938) 95 F. (2d) 784. Cf. *The Story of the Algic*, Algic Defense Committee of the National Maritime Union. New York. 1937.

In 1940 the Maritime Labor Board recommended a labor relations plan for the industry, including a proposal that Congress announce that seamen were free to strike in domestic harbors. (March 4, 1940) 6 Labor Relations Reporter 3.

In 1926 the United States Supreme Court held that a state legislature had power to pass a law making it a felony for a miners' union official to call a strike to compel the company to pay a "stale" wage claim to a member who might instead have made his claim in court. It may be concluded that it is not unconstitutional for a state to forbid other "unreasonable" strikes, though not to forbid all strikes.²⁵ A number of purposes have been condemned by courts: for instance, strikes against a builder from a higher wage area who takes a contract in a lower wage area, to compel him to pay the higher rates in the other location; strikes to compel a company to continue to manufacture; and strikes to have more men employed at given operations. Each of these demands has been upheld by still other courts,²⁶ and in other situations each has been pressed successfully without the matter ever coming to court.

In 1939 the Antitrust Division of the Department of Justice announced that it intended to prosecute unions if they engaged in unreasonable restraints designed (1) to prevent the use of cheaper materials, improved equipment, or more efficient methods, (2) to compel the hiring of useless and unnecessary labor, or (3) to destroy an established and legitimate system of collective bargaining.²⁷

It is not only courts that decide whether a strike is to be suppressed. For instance, the California judicial position has long been that no strike is in itself illegal. Presumably this included the San Francisco general strike of 1934, but police and vigilantes looked on that strike as being outside the law and felt themselves called upon to hinder the strikers' activities in every possible way, even to the extent of raiding many offices of unions and of radical organizations. Public opinion is not restricted, even to the extent that judicial decisions are, by precedents based on the laissez-faire tradition; if people think a wage demand exorbitant they hold the strike to be unreasonable and condone all attempts to interfere with it.

The closed shop. The closed-shop demand is opposed by two main legal arguments: that it is monopolistic, and that it is merely an organizational demand. This second argument (also directed against strikes for recognition) means that the harm done to the company by a strike is justified if the

²⁵ The Kansas law applied in this case, *Dorchy v. Kansas* (1926) 272 U.S. 306, had forbidden *all* strikes (in essential industries). Though compulsory arbitration was substituted, the Court held this sweeping ban to be void. Cf. the attempt of an Oregon town to ban all strikes, held void by the Oregon supreme court. *Hall v. Johnson* (1917) 87 Oregon 21.

²⁶ Witte, *op. cit.*, pp. 20 ff.

²⁷ See comment, "The Folk-Law of Thurman Arnold" (December 1939) 8 I.J.A. 53. We shall see that the Antitrust Act can also be applied to refusals to handle nonunion materials, especially where unions and employers conspire to exclude competing companies and workers from the market and to raise prices. If a union project has as its aim making profit for union leaders, it is a racket and may be prosecuted as extortion. Victor Weybright, "Unions and the Rackets," *Survey Graphic* (May, 1937), Vol. 26, No. 5, pp. 259-62.

men ask for immediate higher wages but not if they demand something that puts them in a position to demand higher wages later. This better bargaining position is spoken of as being only a remote benefit to the unionists. Their demand is condemned even more strongly if it is made not by employees but by an outside union which uses a boycott to impose it.

On these bases a company may seek an injunction against a closed-shop strike or a boycott. Or, where a company has acceded to the closed shop, men unwilling to join the union may sue for damages or an injunction. This, too, helps the company against the union.

The courts have been and are divided on whether or not to approve the closed shop.²⁸ The majority of decisions have gone against the closed-shop strike. Suits against established closed-shop agreements have been less successful, except where the complainants could allege that substantially the whole trade would be closed to nonunionists.²⁹

The New York Court of Appeals expressed itself favorably toward the closed shop in 1938 in a suit by six displaced workers of the B.M.T. subway who were unwilling to join the union after it had signed a closed-shop agreement with the company. The court, admitting that it would be hard for the nonunion men to find work in their accustomed line, said that it would leave it to the legislature to decide between their interests and those of the unionists. It noted that the legislature had long ago provided that its anti-monopoly law was not to apply to labor agreements.³⁰

A state in which the court has recently begun to permit the closed shop is Pennsylvania.³¹ Recent decisions in New Jersey—except one—still oppose it.³² The Supreme Court of Maine has upheld not only an injunction but also conspiracy convictions against organizers of C.I.O.'s United Shoe Workers, who had called a strike in a region to which Massachusetts shops had fled to avoid union wages. The closed shop was the central charge.³³

In California the traditional doctrine has been that strikes and boycotts

²⁸ Frankfurter and Greene, *op. cit.*, pp. 27-30; "The All-Union Shop in the Courts" (June 1938) 6 I.J.A. 147, 154-8; L. M. Despres, "The Collective Agreement for the Union Shop" (December 1939) 7 Univ. of Chicago Law Rev. 24-57.

²⁹ E. S. Oakes, *The Law of Organized Labor*. Lawyers Co-operative Publishing Company Rochester. 1927. Pp. 392 ff., 238 ff.

³⁰ *Williams v. Quill* (1938) 277 N.Y. 1. The New York Court was probably influenced by the fact that the state and federal labor relations laws recognize the closed shop. But these laws did not bind the court to refuse an injunction. As we shall see in Chapter 31, all that their closed-shop clauses do is relieve companies of certain charges of discrimination, namely discrimination against nonunion workers in bona fide closed shops.

³¹ *Kirmse v. Adler* (1933) 311 Pennsylvania 78. The 1939 amendments to the Pennsylvania labor relations law recognized closed-shop agreements as nondiscriminatory only if the union was an open one.

³² *Four Plating Case* (1937) 122 N.J.Eq. 298. An illustration of the usual New Jersey holdings is *ibid.*, p. 222.

³³ *Charles Cushman Co. v. Mackesy* (1938) 135 Maine 490 and *Mackesy v. State* (1938) 200 Atl. 511. The opinion in the *Keith Case* (1936) 134 Maine 392 reviews the precedents against the closed shop. The Maine anti-injunction law did not prevent an injunction.

are legal if they are peaceful. But a set of cases decided by an Appellate Court in 1939 ruled against the closed-shop demand in situations in which the strike was directed against retailers and the picketing influenced their customers, or in which no substantial strike existed and the union's effort was chiefly one of boycott. The court stated that the closed shop was contrary to public policy as expressed in a 1933 law against agreements to join or not to join a union.³⁴ This law was passed to prevent companies from obtaining injunctions based on "yellow-dog" contracts—antiunion promises by individual employees—and the court seems to have stretched the law a good deal by its interpretation.

Another project which has been condemned as unreasonable because it relates to unionizing rather than to wages or hours is the strike against a company requirement that the employees agree not to join a union. The next section takes up these yellow-dog contracts in relation to unionizing without any strike.

The National Labor Relations Act, by making it the company's duty to bargain only with the majority union, occasionally presents a dilemma to a company which is struck or boycotted by another union. If it recognizes the minority union, it violates the Act. If it does not, continued picketing may injure its business. Companies try to solve this problem by asking courts to forbid the picketing, on the general ground that it is wrong for a union to put pressure on a company to violate a legal duty. The Supreme Court refused an injunction in the *Fur Union Case* in 1939. (See Chapter 31.)

DRIVES FOR RECOGNITION

We have noted on several occasions the hostility which unions have typically met when they tried to extend their membership to territory hitherto nonunion. The previous section showed that sometimes strikes for recognition or against yellow-dog contracts have been held illegal. Later sections will show that boycott methods of entering nonunion territory are often forbidden. This section will describe cases in which, even without the charge of boycott methods, courts condemned in sweeping terms the attempt to recruit new members either (1) as a monopolistic plan, illegal under the Sherman Act, or (2) as a plan to cause workers to "break their contracts" with employers. These cases occurred before 1930.

³⁴ *McKay, Rengel, and Smith Cases*, decided April 17, 1939, C.C.H., Par. 18,339-41. The unions' lawyers in vain cited the California Supreme Court of 1908 in favor of the closed shop and the same court in 1921 as permitting peaceful picketing. A lower court at Los Angeles had decided, just before, that a closed-shop agreement was void unless the union were shown to have been the freely designated choice of the employees. *California Milling Case*, January 16, 1939, C.C.H., Par. 18,292. Cf. *Lyle Case* (1939) 174 Tenn. 222, enjoining a closed-shop boycott aimed to prevent the employer from working.

"C.C.H." refers to Commerce Clearing House, *Labor Law Service*; see General Readings at the end of Chap. 27.

The Hitchman Coal and Coke Company of West Virginia had dealt with the United Mine Workers but after several strikes it decided, in 1906, to run nonunion. It had each of its employees sign a yellow-dog agreement not to join the union while in Hitchman employ. A union organizer, however, named Hughes, got some of them to pledge themselves secretly to the union with the understanding that they would go out on strike when enough had signed up. The union was particularly anxious to organize the nonunion regions of West Virginia and the Southern states which were beginning to compete seriously with the North, for it feared that the Northern wage rates would fall if the Southern rates were not raised. When these union activities were revealed the Hitchman Company applied to the federal court, which issued a sweeping order forbidding even peaceful persuasion.³⁵ The order was issued under general legal principles and the diversity-of-citizenship rule, though at one stage the Sherman Act was brought in, too. There were thus two grounds for the injunction: (1) the union was inducing men to break their antiunion agreements; and (2) the union was trying to monopolize coal-mine labor and, by agreement and combination with Northern operators, to protect them from competitive commerce in coal by seeking "to restrain and even destroy it in West Virginia. . . . Such a combination is clearly a common-law conspiracy, too far reaching to be reasonable, in restraint of trade, as well, in my judgment, as direct violation of the Sherman Anti-Trust Law."³⁶ The second basis was expanded to the conclusion that the United Mine Workers was an unlawful organization. Among other things the court pointed to the union's requirement that members surrender freedom of action and permit the union to call their strikes. Being unlawful, it said, the union should not be free to persuade miners to join it.

The repute of unionism. The Circuit Court denied that the union was an unlawful organization. The Supreme Court, in upholding an injunction against unionizing the company's employees, used the common law rather than the Sherman Act; it based its decision entirely on the inducement theory.³⁷ But its attitude was not far from that of the district court which looked on the union itself as unlawful. This can be seen in Justice Pitney's opinion, which said, in part:

Plaintiff's repeated costly experiences of strikes and other interferences while attempting to "run union" were a sufficient explanation of its resolve to run "non-union," if any were needed. But neither explanation nor justification is needed.

³⁵ *Hitchman Coal and Coke Company v. Mitchell* (1909) 172 F. 963.

³⁶ (1912) 202 F. 512, 546. See also Edward Berman, *Labor and the Sherman Act*. Harper & Brothers. New York. 1930. Pp. 90-95.

³⁷ (1914) 214 F. 685; (1917) 245 U.S. 229. A criticism of the Supreme Court's reasoning is in W. W. Cook, "Privileges of Labor Unions in the Struggle for Life" (April 1918) 27 Yale Law Journal 779-801.

Whatever may be the advantage of "collective bargaining," it is not bargaining at all, in any just sense, unless it is voluntary on both sides.

. . . there was no middle ground open to plaintiffs; no option to have an "open shop" employing union men and non-union men indifferently; it was the union that insisted upon closed-shop agreements, requiring even carpenters employed about a mine to be members of the union, and making the employment of any non-union man a ground for a strike; and secondly, plaintiff was in the reasonable exercise of its rights in excluding all union men from its employ, having learned, from a previous experience, that unless this were done union organizers might gain access to its mine in the guise of laborers.

. . . [The union,] far from exercising any care to refrain from unnecessarily injuring plaintiff, deliberately and advisedly selected that method of enlarging their membership which would inflict the greatest injury upon plaintiff and its loyal employes. Every Hitchman miner who joined Hughes' "secret order" and permitted his name to be entered upon Hughes' list was guilty of a breach of his contract of employment and acted a lie whenever thereafter he entered plaintiff's mine to work. Hughes not only connived at this, but must be deemed to have caused or procured it, for it was the main feature of defendants' plan, the *sine qua non* of their programme. Evidently it was deemed to be necessary, in order to "organize the Panhandle by a strike movement," that at the Hitchman, for example, man after man should be persuaded to join the union, and having done so to remain at work, keeping the employer in ignorance of their number and identity, until so many had joined that by stopping work in a body they could coerce the employer and the remaining miners to "organize the mine," that is, to make an agreement that none but members of the union should be employed, that terms of employment should be determined by negotiation not with the employes but with union officers—perhaps resident of other states and employes of competing mines—and that all questions in controversy between the mine operator and the miners should likewise be settled with outsiders . . . [This plan] cannot be treated as a bona fide effort to enlarge the membership of the union. There is no evidence to show, nor can it be inferred, that defendants intended or desired to have the men at these mines join the union, unless they could organize the mines. Without this, the new members would be added to the number of men competing for jobs in the organized districts, while non-union men took their places in the Panhandle mines . . .

It was one thing for plaintiff to find, from time to time, comparatively small numbers of men to take vacant places in a going mine, another and a much more difficult thing to find a complete gang of new men to start up a mine shut down by a strike, when there might be a reasonable apprehension of violence at the hands of the strikers and their sympathizers. The disordered condition of a mining town in time of strike is matter of common knowledge. It was this kind of intimidation as well as that resulting from the large organized membership of the union, that defendants sought to exert upon plaintiff . . . not to mention misrepresentation, deceptive statements, and threats of pecuniary loss communicated by Hughes to the men . . .

The new justice, L. D. Brandeis, wrote a dissent for himself, Holmes, and Clarke. Among other points, he explored the command laid on the union that it abstain from "unionizing the plaintiff's mine without the

plaintiff's consent," pointing out that in a sense every union existed without the company's consent. He deplored the injunction against intimidation when the evidence showed only peaceful persuasion.

Decline of the yellow-dog injunction. It seemed, then, that peaceful unionizing drives could be prevented, not by calling them restraint of trade, but by the next best method—having every employee sign a yellow-dog contract. Yellow-dog contracts had been used, as a psychological device, for a long time, but now it seemed that they could be made a legal weapon, too. Many more employers took them up.

A number of federal suits were begun by West Virginia and Kentucky coal companies. As in the *Hitchman Case*, the District Courts granted sweeping injunctions, only to have them modified by the Circuit Court. In 1921 the Borderland Coal Corporation and sixty-two other companies obtained from Judge Anderson, who had forbidden the 1919 national coal strike, an order forbidding unionized coal companies to "check off" dues for the union from the miners' pay envelopes and forbidding the union to use its money to unionize.³⁸ The Circuit Court ruled that this order was void, but that the court might forbid the use of money for acts which it held to be clearly unlawful: the destruction of mine property, intimidation, and attempts to pledge men secretly to the union.³⁹

A similar pattern was followed in the suits of three hundred sixteen companies begun in 1920-22; temporary injunctions were issued and modified by the Circuit Court in 1923. The dozen suits were then united for trial (the *Red Jacket Case*) to see whether a permanent injunction should be issued. In 1925, while the district court was considering its decision the Supreme Court handed down the second *Coronado* decision, in which it held a coal strike to be a step in the control of wages and prices, and illegal if violent. Soon afterward the district court ruled in the *Red Jacket Case* that the union was conspiring to obtain recognition and to restrain commerce in coal. It granted injunctions against destruction, intimidation, persuasion to break yellow-dog contracts, trespass, and aid to miners who stayed in company houses after discharge.

The Circuit Court substantially upheld ⁴⁰ this decision, in 1927 after the Northern coal companies had rebelled against the United Mine Workers and just as the union was launching what was to be an unsuccessful resistance by strike. The opinion of Judge John T. Parker did not find unlawful either the union itself or its aim to extend its membership, and it did not consider whether the union conspired with the North against the South.

³⁸ (1921) 275 F. 871.

³⁹ (1921) 278 F. 56.

⁴⁰ (1927) 18 F. (2d) 839. Cf. *Pittsburgh Terminal Coal Case* (1927) 22 F. (2d) 559; also the *Alco-Zander Case* (1929) 35 F. (2d) 203, discussed in Berman, *op. cit.*, pp. 250, 324.

But it found that the union officers "conspired to interfere with the production and shipment" of coal "in order to force the unionization of the West Virginia mines." One step was "the strikes called by the union in the non-union fields of West Virginia in 1920 and 1922 and the campaign of violence and intimidation incident thereto." Another was the inducement to disregard yellow-dog contracts. This was found to be wrong on the basis of the Supreme Court's decision in the *Hitchman Case*.

Public opinion had been turning against yellow-dog injunctions and Parker might have re-examined the question. But he followed the Supreme Court. As a result, when he was nominated for the Court in 1930, the Senate rejected him chiefly because of the Red Jacket affair.

The Ohio Supreme Court had refused to base an injunction on inducement to break yellow-dog contracts, in 1923, and the New York Court of Appeals did likewise in 1927. In neither case, to be sure, was the company able to show *secret* inducement; when the injunction was asked for, the union had either called a strike or tried to.⁴¹

Many legislatures then spoke out against yellow-dog injunctions and forbade judges to issue them.⁴²

PICKETING IN THE ABSENCE OF A STRIKE

Though the courts' sweeping condemnations of unions which try to organize the unorganized seem to be a thing of the past, peaceful picketing or withdrawal of labor is still condemned in many unionizing situations when the boycott is used. The next two sections of this chapter are to take up the sorts of boycott which are most suspect with courts—threats of loss of patronage or loss of labor to firms that deal with a nonunion company or a struck company. They are usually called secondary boycotts, and when they take the form of picketing the retail outlets of the antiunion company, that picketing is called secondary picketing. The present section deals with picketing to appeal to a retail store's patrons and workers *in order to unionize the retail store itself*. This sort of boycott is one degree more direct and is less suspect than is the secondary boycott, since only the one shop is subjected to economic pressure.

In some of the closed-shop picketing cases above, the pickets' actions

⁴¹ *LaFrance Electrical Case* (1923) 108 Ohio 61. *Exchange Bakery Case* (waiters' union) (1927) 245 N.Y. 260. See also *Interborough Rapid Transit Company v. Lavin* (1928) 247 N.Y. 65, and *Interborough Rapid Transit Company v. William Green* (1928) 227 N.Y. Suppl. 258. In the latter the union lawyers recognized that the issue was the desirability of unionism. Their brief was a long compilation of expert opinion favoring unions, later reprinted by the Workers' Education Bureau.

⁴² See Chapter 29. We shall see in Chapter 30 that legislatures had long ago gone further and attempted to forbid yellow-dog discriminations, and that in 1933 these attempts were resumed.

were legally suspect also on the general ground that there was no strike. The Tennessee Supreme Court in 1939 enjoined the picketing of a one-man meatshop intended to keep customers away (the *Lyle Case*, above). Of the three closed-shop picket groups condemned by a California court in 1939 (above), one was in front of a meatshop; another was making a similar appeal to customers on behalf of an auto salesmen's union; the third was picketing for a warehousemen's local affiliated with the A.F.L. longshoremen's union. A union sometimes pickets where another union has signed a contract; in previous sections we saw that the company sometimes complains that the pickets are putting pressure on it to violate this contract or to violate the law by bargaining with a minority union. But in some jurisdictions it could rest its complaint simply on the ground that picketing in the absence of a strike is unlawful.

In New York the leading case is the *Exchange Bakery Case*. A few waitresses struck, but the others did not and the lunchroom was quite able to operate. The case was fought up to the Court of Appeals, which said that picketing without a strike was as lawful as a strike without picketing; the dissent stressed the inequality of bargaining power between a small firm and a big union.⁴³ Illinois in 1938 accepted this rule and recognized the Machinists' liberty to announce a garage's unwillingness to deal with the union.⁴⁴ The Oregon supreme court did the same, relying on "the better reasoned cases" in Oregon.⁴⁵ But in other states this has not been the general rule.

In the special case of pickets continuing to appeal to workers after the strike had failed, the Massachusetts Supreme Court held that the strike had really ended when the company found new help and the strikers found new jobs, but recently the courts of New Jersey and Connecticut, while accepting this principle, have expressed themselves as reluctant to interpret the evidence as showing that the strike was really over (in cases where the chief appeal was to customers). A California court has permitted picketing though the company was back to normal.⁴⁶

Legislation against boycotts is chiefly aimed at secondary ones, but it may be interpreted to cover simple picketing in the absence of a strike. Thus

⁴³ (1927) 245 N.Y. 260. The New York courts had previously been divided. In *Bent Steel Sections, Inc. v. Doe* (1939) 3 Labor Relations Reporter 820, a New York lower court refused an injunction similarly.

⁴⁴ *Schuster Case* (Illinois, 1938) 12 N.E. (2d) 50, reversing injunction.

⁴⁵ *George B. Wallace Co. v. Machinists* (1936) 155 Oregon 652 (auto repair). The court did not rely on the anti-injunction law.

⁴⁶ *Steinert Case* (1911) 207 Mass. 394; *Rossi v. Waiters*, New Jersey Court of Errors and Appeals, Sept. 16, 1938, C.C.H., Par. 18,256; *Loew's Case*, Connecticut Supreme Court of Errors, May 5, 1939, C.C.H., Par. 18,361; *Barracough Case*, Superior Court of California, Aug. 22, 1938, C.C.H., Par. 18,230. Chapter 31 will show that under the National Labor Relations Act employee status ceases when a strike does.

in 1938 the Oregon legislature forbade the boycotting of an employer who was not directly a party to the labor dispute. In 1939 Wisconsin made illegal a strike or boycott not agreed to by a majority "of employees of an employer against whom such acts are primarily directed," and *all* secondary boycotts; Minnesota made illegal picketing by nonemployees. Older antiboycott laws, though seldom used, were on the statute books in Illinois, Wisconsin, Colorado, Utah, and Texas.⁴⁷ We saw in Chapter 27 that some states and towns had general antipicketing laws that would apply to boycotts.

BOYCOTTING THROUGH CONSUMERS AND RETAILERS

The fact that persuasion done by posting peaceful pickets is often effective in appealing to ultimate consumers gives an advantage to unions in the retail field. It also gives an advantage to unions whose members make goods for retail sale, for we shall see that they can station pickets at the retail outlets. Workers making machine parts or building trades workers rarely have ultimate consumers to appeal to. In between stand employees of companies selling fixtures or services to retailers. Their union, too, may picket the retailers or appeal to the retailers' customers in other ways. But goods bearing brand names, resold by retailers, are more easily attacked than are anonymous fixtures or services about which consumers are less conscious.

This "secondary picketing," like the sympathetic strike, is an indirect attack and is objected to as harming innocent bystanders, in this case the retailers. It may occur as part of a strike or as part of a unionization drive, and it is carried on more easily if the retailers are in the same city as the manufacturer.

The growth of American unions at the beginning of the twentieth century was accompanied by a growth of boycotts through retailers. At that time unions relied less on secondary picketing and more on calling their "unfair list" to the attention of customers and retailers. The unions' success in using this and other methods led to the formation of the American Anti-Boycott Association (now the League for Industrial Rights). The Association helped the Danbury hat firm of Loewe and Company to resist the United Hatters' closed-shop drive, begun in 1897 and reinforced by boycott methods. The Loewe strike began in 1902. With the co-operation of the A.F.L., advertisements were published and retailers were told that union members and sympathizers would buy neither hats nor anything else from them if they stocked Loewe hats. A year later the company sued for \$88,000

⁴⁷ Witte, *op. cit.*, p. 78. The old Wisconsin boycott law had presumably been superseded by the "anti-injunction" law, which was in turn practically superseded in 1939 by the amendments to the labor relations law.

damages, to be tripled under the federal antitrust law. The Supreme Court held in 1908 that there were grounds for suit, pointing to the common-law principle that a combination was illegal if it compelled one not to engage in a trade except under conditions imposed by the combination. (If this principle were applied literally, it would ban all strikes.) The court also held that the antitrust law applied to labor.⁴⁸ The case was tried and union members were assessed \$252,000. In 1915 the Supreme Court sustained this assessment, pointing out that members made themselves liable by not quitting the union when the boycott began.

The essential point of the Hatters' boycott was its influence on the consumers, both unionists and others. Such a boycott does not necessarily involve interviewing and "threatening" retailers any more than it need involve picketing. The main boycott weapon used by the A.F.L. against the Bucks Stove and Range Company was putting the company on its published unfair list, after the company had refused to recognize the Molders. The company sued for an injunction in 1907. Since it was not empowered by the Sherman Antitrust Act to ask for one, it sought the injunction under the common law of the District of Columbia. The *Bucks Case* reached the Supreme Court in 1911 (though the company had by then settled with the union) because Gompers and others were in contempt. Though it was going to dismiss their case, the Court took occasion to reaffirm the position it had taken in the *Danbury Hatters' Case* and to rebut the unionists' plea that the principles of free speech and free press gave them constitutional immunity from suit.

The A.F.L. unfair list involved here did not usually reach many consumers, but it did in this case because the lawsuit brought it so much publicity. Nevertheless, the A.F.L. officers, who had narrowly escaped serving jail sentences as a result of it, decided that the advantages were not worth the legal risks involved and discontinued the list.

Secondary picketing. With the revival of unionism in the 1930's there was an increase of boycotting by means of secondary picketing. Sometimes this type of picketing is done to aid a strike. Thus in a recent California newspaper strike the Newspaper Guild was forbidden to put pickets in front of stores which continued to advertise in the paper.⁴⁹ More often secondary picketing is done to secure recognition or even the closed shop, without a strike, in a place that has been nonunion. Thus in New Jersey the Furni-

⁴⁸ *Loewe v. Lawlor* (1908) 208 U.S. 274. The court accepted the statement of the company's lawyers that Congress intended this. A. T. Mason's *Organized Labor and the Law* (Duke University Press, Durham, 1925) supports this position, but Berman, *op. cit.*, opposes it.

⁴⁹ *Citizen-News Case*, Superior Court of California, August 1, 1938, C.C.H., Par. 18,221. Cf. *Bulletin Case* (1939) 5 Labor Relations Reporter 243.

ture Workers' secondary picketing was enjoined.⁵⁰ There have been many such cases in New York, where judges distinguish several different situations:

1. The retailer is reselling the manufacturers' goods, and the public is urged not to buy *that brand* from the retailer.
2. He is reselling the manufacturer's goods, and the public is urged to buy *nothing* from him until he stops carrying them.
3. He buys nonunion goods or services not for resale—electric signs, painting services, newspaper advertising space—and the public is urged (as in the second situation) directly or by implication, to buy nothing from him until he announces that he is abandoning his nonunion purchasing.

In the first example the picket's signs will perhaps not even mention the retailer's name, but people do not read carefully and an appeal not to buy one thing may lead them to stay away altogether from the retailer as effectively as does the more general appeal in the second situation, provided the picketing is clearly associated with the retailer's entrance. Despite this overlap, the courts in New York, where most of the legal complaints have been made, usually distinguish the two first situations from the second. Though the first has been called a secondary boycott by some judges who wished to forbid it, it has been more usual to confine the charge of illegality to the second and third.

It is hard to see how a sensible line can be drawn between different appeals. If it is justifiable for the union to appeal to consumers in one case it must be so in the others. If it is of interest to the consumer to know what labor conditions he is subsidizing in one case, it must be in the other cases too. If a specific commodity such as a nonunion bread may be named outside the retailer's shop, it should be permissible to name a nonunion ingredient in the retailed goods or services or the more general goods or services bought by the retailer—window cleaning, electric signs, and newspaper ads.⁵¹ The courts' attempt to draw a line runs in terms of whether the retailer and the supplier are in the same line of business—whether there is a "unity of interest." This seems to be irrelevant; it arbitrarily gives one union rights of access to consumers and denies them to unions that are presumably equally deserving. The reason for it seems to be compromise; to

⁵⁰ *Mitnick Case*, New Jersey Court of Chancery, July 8, 1938, C.C.H., Par. 18,218 (closed shop). The opinion distinguishes between natural or absolute rights and qualified rights such as free speech. It is quoted in (August, 1938) 7 I.J.A. 17.

⁵¹ In the *Brooklyn Eagle* strike of the Newspaper Guild, one judge forbade reference to the advertiser but the other denied an injunction (under the anti-injunction law). *New York Law Journal*, December 4, 1937, p. 1994, col. 3, and October 20, 1937, p. 1251, col. 1. See also *Citizen-News Case*, above, and M. H. Feinberg, "Analysis of the New York Law of Secondary Boycotts" (December, 1936) 6 *Brooklyn Law Review* 209-27, and J. R. Hellerstein, "Secondary Boycotts in Labor Disputes" (January, 1938) 47 *Yale Law Journal* 341-70.

give at least some retailers "a break." Similarly, in permitting pickets to name only *the product*, the courts are permitting a *moderate* harm to the retailer and to the union a moderate chance at success.

The New York anti-injunction law, like others, legitimizes peaceful communication in situations involving labor dispute, but we shall see that the courts are able to continue to forbid it where there is no "unity" of interest on the theory that there is no "labor dispute." But, regardless of unity of interest, peaceful secondary pickets may not be arrested for disorderly conduct in New York.⁵²

Just as companies plead that picketing to unionize is not part of an ordinary, justifiable labor dispute, so they plead that there is no labor dispute in cases in which Negroes picket to have Negroes hired in a larger proportion to the total force (see Chapter 29), or in which retail unionists picket a store which stays open on Sunday. The latter case came before a California appellate court, which ruled that there was no labor dispute (though the unions were apparently afraid that other employers would be forced to open and to work their employees on Sunday). However, the court said that citizens were free to express their views by picketing in any case, and released the solitary picket who had been arrested under an injunction that had been issued.⁵³

SYMPATHY STRIKES

While boycotts are usually thought of as appeals to consumers to withdraw patronage, withdrawing labor can have similar effects. In a unionized situation, if a strike is called, the unionists may ask other unionists to strike in sympathy; or they may ask for a limited sympathy strike, namely that the others refuse to handle "hot" goods—goods which come from or are going to the recalcitrant company. In an un-unionized situation, too, the union in the industry may try to get recognition by having its members who work in earlier or later stages of production refuse to handle "hot" or nonunion goods.

These two sorts of sympathetic action are useful if they can be invoked against companies on whom the recalcitrant really depends. Even if it is only a refusal to handle, if it is successful in embarrassing a purchaser com-

⁵² *People v. Bellows* (New York, Appellate Division, 1939) 170 Misc. 66. This was a neon-sign case.

⁵³ *Ex parte Lyons* (Cal., 1938) 81 Pac. (2d) 190. The California Supreme Court accepted this decision. The precedent which the lower court cited for the general legality of "secondary boycotts" in California was the *Parkinson Case* (1908) 154 Cal. 581. If a union pickets a company which cuts prices below "normal," it is usually because it expects price cutting to lead to wage cutting. However, in many cases the union's activity can be described as helping the other companies to restrain trade (keep prices up), in return for recognition, higher wages, or the like. See "Sympathy Strikes," below, and Chapter 29.

pany, this company will stop buying from the recalcitrant at least temporarily. A sympathy strike may also be called against seller companies to cause them to refuse to sell to the recalcitrant. This rarely happens, except for the occasional refusal of truck drivers to deliver for the recalcitrant or for companies doing business with it.

The most frequent sympathy strikes have been those of truck drivers and of installers. In the former case, in which truck drivers and strikers, who usually do not belong to the same union,⁵⁴ get together, either the truck drivers secure a promise of future assistance from the other union, or they get no promise but co-operate in the hope that it will mean more work or higher wages for themselves eventually, or that more and stronger unions in the town will give labor greater political and economic strength; or they may act simply out of fraternal solidarity. In the second case, that of the installers, they usually belong to a union that also includes workers who manufacture parts of buildings or machines to be installed. Typically, manufacturing has been less well organized than installing, and the stronger end of the union has helped the weaker, essentially for its own benefit.

In general it is the building trades which have most often refused to handle "hot" goods; not only have installers helped manufacturing employees but one craft on the construction job has helped another. They have not, however, helped each other every time, for many jurisdictional fights between the crafts have kept them from co-operating fully, even after they were loosely joined in a Building Trades Department by the A.F.L. Another group of crafts which have sometimes worked together are seamen, longshoremen, warehousemen, and teamsters. This co-operation was impeded by the C.I.O.-A.F.L. split, which left the seamen and longshoremen in opposite camps. Longshoremen on the West coast have often contributed pickets to other unions; thus in 1937 helped the struggling auto union in the Ford plant near San Francisco by refusing to handle "hot" cars during a strike.⁵⁵

The C.I.O.-A.F.L. split led to boycotts against goods produced by members of the other side, notably a carpenters' boycott against wood logged or sawed by C.I.O. men. These new disputes were enlarged versions of the jurisdictional squabbles between A.F.L. unions. Like all jurisdictional disputes, they lowered the prestige of unionism. They also led to loss of membership and to political defeats in the 1938 elections. These effects were strongest in the Northwest, where the carpenters' boycott centered; in Oregon a number of union officials were jailed for complementing refusal to work on C.I.O.-made materials by arson and other violence. In New Orleans, build-

⁵⁴ Occasionally a manufacturing union has organized the truck drivers in the same line, though the teamsters' union has always objected. The brewers and the Ladies' Garment Workers are illustrations. In Seattle the teamsters organized many other trades.

⁵⁵ C. Raushenbush, *Fordism*, League for Industrial Democracy, New York, 1937.

ing unions were indicted under the Sherman Act for refusing to receive material delivered by C.I.O. truck drivers.⁵⁶

Judges called on for injunctions against sympathetic action are likely to say that the unionists taking it have no immediate interest in striking their employer, that there is no "unity of interest" between them and the union they are helping. Judges who refuse injunctions note the actual interest which the sympathizers usually have and which, rather than altruism, their attorneys urge as the legal excuse for their strike. There is a special economic motive, that is to say, legal excuse, for men working in one stage of production to help those in another stage who have skills which enable them to move to a job in the first stage—for instance stone finishers may help quarrymen or sheet-metal workers installing furnaces may help those manufacturing them. If either group were left unorganized the other group would be weakened, since it would be in constant danger of being underbid by unorganized workers seeking and capable of filling jobs in its own industry.⁵⁷ These situations become rarer as skills are broken up and men are unable to shift to other jobs.

The Sherman Act. The majority of the courts have held sympathetic action unlawful.⁵⁸ The most imposing cases have been those involving the building trades of various large cities. These suits have very often been brought under the Sherman Act, and in many instances they were suits against unions which had made deals with certain employers who wanted to restrict the number of their competitors or punish competitors who cut prices. Under the guise of boycotting nonunion materials, unions have refused to work for contractors who did not conform or for contractors who dealt with nonconformers or with contractors who bought from suppliers selling to nonconformers. In return the unions received some concessions from the "regular" employers, including high wages, the closed shop and help against nonunion firms. Thus in 1940 Chicago tile-layers' unions and tile-laying companies were indicted under the Sherman Act.⁵⁹

This indictment and the many others which occurred early in 1940 marked the fruition of a long study of the building industry by the Depart-

⁵⁶ *The New York Times*, January 16, 1940, p. 1. Cf. November 19, 1939, release of the Antitrust Division of the Department of Justice, which classifies as an unreasonable restraint action "to destroy an established and legitimate system of collective bargaining," that is, jurisdictional disputes.

⁵⁷ Berman, *op. cit.*, p. 256. At the other extreme, little direct benefit was at stake in the sympathetic Pullman strike of 1894. E. V. Debs's attempt to form an industrial railroad union was wrecked when the American Railway Union undertook to help the men engaged in manufacturing cars for Pullman. The fact that the strike was a sympathetic one, a boycott, helped somewhat to blacken it in the eyes of judges and others.

⁵⁸ Witte, *op. cit.*, pp. 28-30.

⁵⁹ *The New York Times*, January 16, 1940. The type case before the Supreme Court was *U.S. v. Brims* (Carpenters) (1926) 272 U.S. 549. Cf. Berman, *op. cit.*, pp. 161-64, 189-90, 288, 299.

ment of Justice and the beginning of a legal drive against the high prices of building and building materials.

It will be useful to stop to consider two suits brought by *unionists* under the Sherman Act against boycotts by antiunion employers' associations, both in California. The first boycott was on the model of those in which unions often participated, but this time it was against the union. Building trades employers organized in the Industrial Association of San Francisco refused to buy from suppliers who sold to employers who recognized the union. The government secured an injunction against the Association, but the Supreme Court held in 1925 that the employers' intent was to regulate building, not commerce, and that there was little evidence that they had actually seriously impeded interstate commerce.

A year later the Court was again ready to find commerce affected, in a suit against Chicago carpenters and their employers⁶⁰ and on the same day, the Court also found commerce affected in a suit by unionists against the second employer's association. It held that Pacific shipowners violated the Sherman Act if they hired seamen through a central bureau which boycotted men who refused to accept its conditions, and which was thought to be antiunion. This case then went back to the district court, which refused to issue an injunction, despite the Supreme Court's statement, because the complaining seamen were unable to prove that the employment bureau affected wages or discriminated against unionists.⁶¹

The Supreme Court has passed on two main cases which involved simple refusals by unions to handle the nonunion materials (without any combination with employers). The *Duplex Printing Press Case* arose because the Machinists feared to lose their hold on the manufacturers of presses if they did not organize Duplex. They had their members who installed and repaired presses refuse to work on Duplex machines, and Teamsters refused to haul them. The Court in 1921 approved an injunction under the Sherman Act. Three judges dissented.⁶²

In 1927, in the *Bedford Case*, the Court upheld an injunction against the Journeymen Stone Cutters, who had been refusing to work on Indiana limestone from quarries which had repudiated the union in the depression year 1921. It was in effect a five-to-four decision. Two judges agreed to the injunction only because they felt bound by the *Duplex* decision. Brandeis and Holmes dissented. Brandeis tried to distinguish the *Duplex* situation from the *Bedford* situation, in order to save unions from a rule which he

⁶⁰ *U.S. v. Brims* (1926), just cited.

⁶¹ *Anderson v. Shipowners* (1926) 272 U.S. 359, (1928) 27 F. (2d) 163. Cf. the later struggle over hiring halls, for instance in the San Francisco general strike of 1934.

⁶² 254 U.S. 443. Chapter 29 discusses the minority's contention that the Clayton Act exempted unions from the Sherman Act.

thought was close to involuntary servitude. He pointed out all the ways in which the Stone Cutters' act were more forgivable than the Machinists'. They had not boycotted with the help of other crafts. They had not even refused to handle all of the nonunion companies' product but only the part quarried by nonunion labor. The judge reminded the Court that it had interpreted the Sherman Act to forbid only *unreasonable* restraints; it had acquitted the United States Steel Corporation and now was holding a small union which had sought to protect itself against a powerful employer group.⁶³

In the same year, refusal to install furnaces not made by fellow members, plus sympathetic strikes by other building unions against a nonunion furnace manufacturer, was condemned by a federal court under the Sherman Act.⁶⁴ But in 1928 another federal court refused to enjoin building crafts for declining to work on buildings in which nonunion men installed organs, and the circuit court upheld the decision.⁶⁵

Not long afterward the anti-injunction law modified the Sherman Act, but in any case the general trend for some years had been toward greater freedom for unions. In 1934-35 the New York Court of Appeals refused injunctions in a case in which building trades workers struck to get their employers to use union teamsters and in another in which dockworkers refused to handle materials unless they were delivered by union teamsters.⁶⁶ In 1938 a California court expressed tolerance for sympathy strikes which longshoremen were threatening against firms doing business with the Sacramento Trading Company though that company pleaded that its men had not struck. They belonged to the textile union, which was relying on the longshoremen to get the company to renew its agreement (which it did).⁶⁷ In 1939 the Iowa Supreme Court denied a manufacturer an injunction against A.F.L. electricians who refused to work on his neon sign because he customarily employed for installation members of an A.F.L. *sign painters'*

⁶³ 274 U.S. 37. This union also took part in employer-union combinations, especially in respect to the use of cast stone in New York City. Berman, *op. cit.*, pp. 288, 299, and 321.

⁶⁴ *Columbus Case* (1927) 17 F. (2d) 806.

⁶⁵ *Aeolian Company v. Fischer* (1928) 29 F. (2d) 679. For other Sherman Act cases before 1929, see Berman, *op. cit.*, Cases 6, 21, 22, 25, 26, 40, 46, 55, and 76 on pp. 286 ff.

⁶⁶ *Willson Case* (New York, 1933) 240 App. Div. 718, 719, (1934) 264 N.Y. 521. *New York Lumber Trade Association v. Lacey* (1935) 269 N.Y. 595; the federal Supreme Court refused to review this decision (1936) 298 U.S. 684. In 1917 in the *Bossert Case*, 221 N.Y. 342, the New York court had expressed tolerance of the Carpenters' boycott, but in 1919 it drew the line at a boycott whose success depended on involving companies not in the same line of business. The boycott in question involved the whole business community of Auburn. A draying company refused to accept the Teamsters' closed shop and was put on the unfair list of the Central Labor Union of Auburn, and many of its customers were threatened with sympathetic strikes. *Auburn Draying Case* (1919) 227 N.Y. 1, 11. In the *Willson Case*, the Appellate Division said that hauling was "a necessary part of construction." But then it was a necessary part of all the business in Auburn too.

⁶⁷ (November, 1938) 7 I.J.A. 53.

union or else nonunion men.⁶⁸ Simultaneously, however, bills to limit boycotts were being introduced in many legislatures and, as we have seen, some of them passed.

General strikes. In some cases the union appeals not to other unions related directly or indirectly by business ties, but to all other unions in the locality. When it calls a strike it always hopes for some help from them, perhaps a money contribution or a vote of sympathy, not to speak of a consumer boycott when retailers are involved. But unrelated unions rarely strike in sympathy—unless, indeed, they all act together and there is a general strike in the town.

In the case of a general strike, there are at least as many factors that favor the employers as there are factors that favor the unions, and no general strike in the United States has been a real success. (1) While the general strike lets people know about the grievance, the employers label the strike "radical" and say that it challenges the authority of government. They play up the dangers to health and safety. They use the exceptions, made by the unions for essential services, to increase as much as possible the work that is done. (2) While labor may expect its voting power to influence the mayor and the city Council, labor votes may not be important to the officials involved or they may hope for more political advantage from supporting the company. In case the union refuses what seems to it a disadvantageous order of arbitration, the refusal to arbitrate may be emphasized to the public and used as an excuse for punitive action. The anxiety to get the strike over may lead the officials to back the employers, or to back a compromise less favorable to the men than they might have won if the officials had not turned public opinion or the police against them. (3) While the employers of the town might try to get their men back by attacking the company originally struck, it is more likely that they will join with it to resist the rise of union labor, partly by trying to influence public action and public opinion.

Outside the United States there have sometimes been national general strikes, usually with a mixture of trade-union and political demands. Within recent times Great Britain has seen such a one, in 1926; and France in 1936 and 1938. In the United States there have been city-wide general strikes in Philadelphia in 1910; in Seattle in 1919; in San Francisco in 1934; in Terre Haute in 1935; in Pekin, Illinois, in 1936; and in Lansing, Michigan, in 1937. Citizens and officials usually oppose general strikes strongly and police them rigorously, often calling in militia. At the very least they fall under

⁶⁸ *Smythe Neon Sign Case* (Iowa, 1939) 284 N.W. 126. For further information see J. R. Hellerstein, "Secondary Boycotts in Labor Disputes" (January, 1938) 47 *Yale Law Journal* 341-370.

the same condemnation that attaches to other sympathetic strikes, especially since agreements are likely to be broken as a result. They nearly always seriously curtail essential services, though the strike committee never cuts these off altogether. And in any case a general strike has the look of a revolution.⁶⁹

SUPPLEMENTARY READINGS

(See also "General Readings" at the end of Chapter 27.)

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QUESTIONS

1. "The main penalty on a union for engaging in a project which is held to be basically wrong is that its freedom of communication is shut off." How does this sort of restraint differ from the limits on communication described in Chapter 27?

⁶⁹ See W. H. Crook, *The General Strike, a Study of Labor's Tragic Weapon in Theory and in Practice*. University of North Carolina Press. Chapel Hill. 1931. Chapter 15 deals with American countries, including the Winnipeg (Canada) strike of 1919. See also S. Perlman and P. Taft, "Labor Movements" (1896-1932), Vol. IV of *History of Labor in the United States*. The Macmillan Company, New York. 1935. Pp. 345-46 (Philadelphia strike in sympathy with streetcar workers); p. 351 (New York attempt at strike in sympathy with streetcar workers); pp. 439-43 (Seattle strike in sympathy with metal workers and Winnipeg strike in sympathy with metal and building trades workers). And S. Yellen, *American Labor Struggles*. Harcourt, Brace and Company. New York. 1936. Chap. 10 on the San Francisco strike in support of the maritime workers.

2. If an umpire were continually available to interpret the collective agreement, would there be a problem of "breach of contract"?
3. Are suits for breach of contract the only ones unions may bring against employers?
4. Under what circumstances would it inflict great or little hardships on people if there were to be a strike by (a) governmental employees, (b) sailors, (c) utility workers?
5. "The closed shop is now accepted just as unionism is." True? Are there different sorts?
6. Explain the term "yellow-dog contract." Does it represent a legal freedom to fire workers or a legal right to ban organizers?
7. Draw up a proposal regulating picketing in the absence of a strike and secondary picketing. Would you treat them alike? How many pickets would you permit? Would you allow secondary picketing of nonunion electric signs?
8. Would "sympathetic" action (and its legal consequences) disappear if all unions that co-operate "sympathetically" were to federate into a single union?
9. What different sorts of boycotts are there?
10. What injuries are inflicted, and on whom, by the various sorts of suspect projects?

THE previous two chapters have shown us various attempts made by unionists to cut down the amount of government aid extended to employers. Having seen that the injunction has been an important legal weapon of employers it will not surprise us to find that much of labor's effort to influence legislation has been concentrated on attempts to have anti-injunction laws passed. Where such laws have been enacted, employers have still had the power to sue for damages but have rarely used it. They have still had the power to invoke the criminal law, when unionists approached intimidating methods, and they have continually done so.

THE LABOR INJUNCTION

As we saw in Chapter 27, the labor injunction has served to forbid intimidation, reinforcing the criminal law. Sometimes the judge goes further and forbids things which criminal courts would not usually consider to be intimidating. Thus a New Jersey court banned a solitary restaurant picket on the theory that his walking back and forth was as ominous as Poe's pendulum in the pit.¹ A more moderate court will admit that picketing can be peaceful, but may forbid all picketing on the ground that the strikers have at some time used intimidation and that therefore they cannot be trusted to have any sort of picket line. Here the judge may be influenced by a desire

¹ *Gervas Case* (1926) 99 N.J.Eq. 770, 782-3.

to punish the union for its past bad behavior more than to prevent future bad behavior.

As we saw in Chapter 28, an injunction sometimes condemns the union's whole project, forbidding all picketing. Thus, in the New Jersey case just mentioned, the court gave a second reason for banning the solitary picket, namely, that he was picketing in the absence of a strike. In such cases the court definitely sets up an addition to the ordinary criminal law. The court's order applies to the particular dispute before it, but it may make it easier for other judges to issue similar orders.

The injunction has been used in Anglo-American law for several centuries, administered by special "courts of equity" whose original function was to alleviate the rigidity of the ordinary "courts of law." A firm which foresaw that it was going to be injured by someone's action could sue for damages. But since it could sometimes be foreseen that a suit would not be an adequate remedy, the firm might ask a court of equity to forbid the action instead, under penalty of fine and imprisonment if the defendant treated the court's ban with contempt. This is the "injunction," which is issued much as it always has been, though few states now have separate courts for these cases. American judges extended the injunction to labor cases beginning about the time of the Pullman strike in 1894. The labor injunction is rare or unknown in other democratic countries.

If there is a labor dispute and the company wants an injunction to hinder picketing, and the like, it is necessary to persuade a judge (1) that the company will lose by the union's actions; (2) that the actions are likely to occur or recur, if the injunction is not issued; (3) that the actions are wrong and not justified by the union's interest in the situation: (a) so wrong that criminal arrest would be justified; or (b) so wrong that damages would probably be granted after a trial; or (c) at least so wrong that the judge disapproves of them enough to issue an order forbidding them. The company's lawyer would also have to show the judge (4) that there are objections to using the more ordinary damage-suit method; either (a) that the damage would be so hard to estimate properly that the jury might easily err; or (b) that the union and its members are so poor that they probably do not have enough to pay the probable damages; or (c) that so many of them would have to be sued to raise the damages that the courts' dockets would be overcrowded.

It is not very hard to persuade a judge of these things. If the company says that a union has six pickets in front of its place, he can assume that the first, second, and fourth of the arguments are true, and he may also assume, as to the third, that six pickets tend to intimidate; hence that it is wrong to have them there. The company's lawyer will have its president sign an affidavit describing the pickets' behavior in such a way as to make

it sound as intimidating as possible. The judge then issues an injunction to act peacefully which is served on the union and its pickets. When the union's lawyer goes to court to repudiate the company's charges, he will be met with the question: "If the union is not doing those things, what harm will it be to have them forbidden?" His answer is that it does scare some strikers and blacken their cause in the eyes of the police and public. And the union is further harmed if the judge limits the number of pickets or forbids picketing altogether. He will do this if the company has made its statement strong enough or given reasons why it believes the strike itself is unlawful.

Every day that the union cannot picket helps it to lose the strike. At a hearing on the case it may be able to convince the judge (or, perhaps later, an appeals judge) that the injunction was unjustified; but the employer's end is served if the injunction is in operation during the first days of the strike, which are the crucial ones. Organized labor has therefore urged that no injunction be issued till the union has had a chance to reply to the company's allegations, or at least that it be in effect for only a few days if the union does not have a chance to reply to the charges, that a full trial be granted as soon as possible, and that appeals be quicker.

One of the best-known features of the injunction is the fact that it does not require a jury trial when pickets or union officers are charged with contempt of court for violating the judge's order. Trial by the judge alone, usually the one who issued the injunction, has made conviction somewhat more certain and has been one of the reasons employers have used the injunction method. It is also the chief reason why that method has been in general disrepute: Americans feel a man has a right to a jury.

Organized labor has tried for decades to get a jury in contempt cases. Although judges have always had the power to use juries they have not done so. Recently new statutes have granted jury trial, as we shall see. Yet this reform is not a significant one, since prosecutions for contempt have been rather few compared with arrests on other charges in labor disputes. On the one hand, in many cases the injunction has been obeyed, and in these cases it has been useful to the employer for its moral effect because it has frightened the strikers into settling for less. It has also put them in so bad a light in the eyes of the public and the police that, if they did violate the injunction or "misbehave" in some other way, the police would feel free to arrest them and the public would assume that the arrests were deserved.

The federal courts have had the reputation of being stricter with unions than the courts of New York and other industrial states, and company lawyers have often preferred them. Since 1914 the federal antitrust laws have

permitted private parties to sue for injunctions under these laws. This fact accounts for about 10 per cent of the federal labor injunctions. In cases where no federal statute could be invoked, the company had to rely on "diversity"—to arrange a case in which the plaintiff and the defendants were citizens of different states. These cases comprised about two-thirds of the federal labor cases.² When the federal anti-injunction law was enacted in 1932, companies began to bring cases to the state courts instead, since state anti-injunction laws were either considerably weaker or did not exist.

Of over 2,000 injunctions issued between the 1880's and 1932, a quarter were federal injunctions. Fewer applications for injunctions were rejected by the federal courts—6 per cent, as compared with 12 per cent in the state courts. Most applications were filed in the industrial states and about 1,000 injunctions were granted between 1920 and 1930 alone.³

EARLY ANTI-INJUNCTION LAWS AND THEIR RESULTS

Two main forms of relief may be granted to organized labor by anti-injunction laws. One form would make the company use the criminal courts when violence was involved. The other would express the feeling of the legislature that peaceful acts, especially communicating information, were to be allowed in all cases of labor disputes, even where judges might disapprove the unions' motives.

These two reforms, if instituted, would abolish the labor injunction. Actually, anti-injunction laws have not gone so far, for they still allow injunctions against fraud and violence. But the reforms do make it harder to get an injunction, especially to get one without giving the union a chance to reply to it. And they also make any injunction somewhat less useful to the company by providing for jury trial in contempt cases.

Among the first anti-injunction laws were acts of Congress which were aimed against the application of the Sherman Act to labor unions. Beginning with 1913-14 Congress in its appropriation bills directed the Department of Justice not to use money for such suits. But this rule applied only to prosecutions for combining to better labor conditions and for acts not in themselves unlawful done to further such a combination. Moreover, President Wilson, at the time of the first such provision, assured the country that other money was available to enforce the law; and there were many prosecutions in later years.

² Diversity cases are only about one-third of all federal cases, labor and other. Felix Frankfurter and Nathan Greene, *The Labor Injunction*. The Macmillan Company. New York. 1930. P. 210, note 20.

³ C. Daugherty, *Labor Problems in American Industry*, Houghton, Mifflin Company. Boston. 1938. P. 670. Cf. a collection of the available figures in P. Brissenden, "Campaign Against the Labor Injunction," *American Economics Review* (March, 1933), Vol. 23, No. 1, pp. 49-50.

The Clayton Act. Companies could sue for triple damages under the Sherman Act, and in 1914 the Clayton Act gave companies the power to ask for injunctions in all restraint-of-trade cases, including those against unions. But this Act also included sections limiting labor injunctions—the fruit of two decades of lobbying by the A.F.L. and a reward for labor's support in the election of a Democratic President and Congress in 1912. These limitations on the injunction were phrased very ambiguously, and Congressmen seemed to disagree on whether they had merely restated the law or had granted organized labor a Magna Charta, as the A.F.L. said.⁴ As later interpreted by the courts, the law gave only one gain to labor; jury trial in certain private-injunction contempt cases.

The Clayton Act began (Section 6) with a phrase from a California law of 1909: "The labor of a human being is not a commodity or article of commerce." This does not seem to alter the trust laws, since under them unions were almost always accused of restraining trade in *things*, not labor. However, as late as 1938 the phrase was adopted for the new constitution of New York State. Of course, if New York legislators read it "Labor *should not* be a commodity," they will be encouraged to pass labor laws which will modify the harsh operations of an unrestrained labor market.

Section 6 went on to say that workers' or farmers' unions or their members were not to be considered illegal combinations under the antitrust laws. This seemed to mean that a company could not sue for damages, as the Danbury company had, or for an injunction under the new law. Actually the Supreme Court made it mean that, while a union itself was legal, a boycott by it was not.

If there had been interpretation favorable to labor, this section, plus Section 20 (below), by banning both damage and injunction suits, would have brought the United States close to the British act of 1906, which disallowed all such suits in labor disputes. To be sure, the law applied only to suits in the federal courts, and Section 6 only to suits under the trust laws. However, a favorable interpretation might possibly have encouraged corresponding state laws. A number of states had already passed legislation modifying their trust law or injunction law in favor of unions. The Massachusetts legislature took the extreme step of submitting to the state supreme court for an opinion a bill copying the British act. The court said it was unconstitutional.⁵

⁴ Frankfurter and Greene, *op. cit.*, p. 144. Cf. A. T. Mason, *Organized Labor and the Law*. Duke University Press. Durham. 1925, pp. 178 ff.; Edward Berman, *Labor and the Sherman Act*. Harper & Brothers. New York. 1930. Pp. 3-54.

⁵ *In re Opinion of the Justices* (1912) 211 Mass. 618. In the previous year the court had in a limited sense created an anti-injunction law for the state. The legislature in 1910 had passed a law requiring a struck company to notify applicants for jobs that there was a strike. The court took this to declare that strikers had a right of communication. *Steinert Case* (Massachusetts,

Section 20 of the Clayton Act also seemed to be aimed at boycotts and other union campaigns in which the courts, condemning the purpose, so often held unlawful all means however peaceful. Declaring that it covered cases of labor disputes between employers and employees, the section forbade federal courts to prevent people by injunction from "ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do" and listed other similar peaceful acts as legitimate. In limiting injunctions in this way, it did so in respect to all cases, not only those under the trust laws but also "diversity" suits—suits that were in the federal courts only because they were between citizens of different states. Finally Section 20 went beyond limiting injunction suits and also limited damage suits in antitrust cases, though not in "diversity" cases, by adding that none of the peaceful acts listed was to be considered a violation of federal law. This phrase also served to bring under the section injunction and criminal cases instituted by the federal government.

Criticisms of injunction procedure—such as the issuing of temporary restraining orders without hearing the union and the lack of jury trial—were met in other sections of the Clayton Act (17, 18, 19, 21, 22) but, like those already noticed, these sections were ambiguous. Temporary restraining orders were to expire in ten days—but they could be extended for "good cause shown," and in practice most of them were.⁶ The jury clause seemed still to leave it to the judge to decide whether to impanel a jury, and in any case referred to contempt trials only in cases in which a company (not the federal government) had secured the injunction and in which the defendant's action was also a crime.⁷ But even in these cases various federal courts ignored the new law and dispensed with the jury on such pleas as that the strike was illegal, that only cases under the trust laws were aimed at, and that a bankrupt company under court control was exempt.⁸ Two courts held that it was unconstitutional for Congress to impose a jury on the courts. The Supreme Court overruled this view,⁹ though various state courts had held similar state laws unconstitutional.

This sort of reform in procedure made the injunction slightly less useful to employers, whether they were complaining of union means or of union purposes. In cases of alleged intimidation it was the only part of the

1911) 93 N.E. 584. The court continued to give advisory opinions against such laws, but an anti-injunction law was passed in 1933 and amended in 1935.

⁶ Frankfurter and Greene, *op. cit.*, p. 186 and Appendix I.

⁷ These procedural safeguards were to benefit defendants in all sorts of federal cases, not only labor cases. Judges' power to punish for contempt was limited to six months' imprisonment and a fine of \$1,000.

⁸ Frankfurter and Greene, *op. cit.*, p. 193, note 237.

⁹ *U. S. v. Michaelson* (1924) 266 U.S. 42. The Court said that "may" meant "shall."

Clayton Act which limited injunctions; it was Congress's gesture in the direction of referring employers to their criminal-law remedies.

But it was not only the procedural clauses that were interpreted narrowly by the federal courts. During the years after 1914 they looked on Section 20's list of legitimate actions as if it made practically no change in the law. A similar Massachusetts law of 1914 was held unconstitutional by the Massachusetts Supreme Court, just as a California law of 1903 had been ignored by the California courts. However, we shall see that an Arizona law of 1913, worded like the Clayton Act, was upheld by the Arizona Supreme Court.

Interpretation of the Act. In Chapter 28 we saw the federal Supreme Court's holdings against sympathetic strikes. How were they possible in the face of the Clayton Act? The Court's position was forecast in one of these holdings. The federal district court had said that the Carpenters' peaceful refusal to work on nonunion materials, abetted by union manufacturers, violated the trust law, but that private companies could ask only for damages under it, not for injunctions. This was 1913, and the Clayton Act had not yet granted the power to ask for injunctions. It was 1917 when the case reached the Supreme Court. There a minority of three held that, since the Clayton Act was now in effect, the company had the necessary power. The majority, through Justice Holmes, dismissed the company plea by holding the opposite. He commented that, even if the Clayton Act applied, its Section 20 forbade this sort of injunction, but added: "Upon this point I am in the minority."¹⁰

This seems a clear enough clue to Supreme Court sentiment, even if it had not been clear enough in contemporary decisions like that in the *Hitchman Case*, discussed in Chapter 28. However, the federal Circuit Court at New York City did not take the hint. In 1918 it gave the Clayton Act as its reason for refusing an injunction in the very similar *Duplex Printing Press Case*. The Circuit Court said that the Machinists' refusal to install nonunion presses was a "dispute" under the Clayton Act; it interpreted "employers and employees" broadly to refer to the "business class or clan" to which the parties belonged. But, as we have seen, the Supreme Court, getting the case in 1921, repudiated this interpretation. Moreover, the majority pointed out that only "lawful" persuasion of customer-companies was authorized; and it held that the boycott method was unlawful under the trust law. The minority opinion emphasized the unity of economic interest between the machinists in the factories and on installation jobs.¹¹ We shall see

¹⁰ *Paine Lumber Company v. Neal* (1917) 244 U.S. 459, 484.

¹¹ 254 U.S. 443.

that seventeen years later this minority opinion became the majority opinion in the *Senn Case*, but in the interim the anti-injunction clauses were dead.

Unions sometimes offered the Clayton Act as a defense after 1921, but it was rejected by the lower federal courts. In many cases they rejected it by holding to narrow interpretations of a "labor dispute" between employers and employees. This meant that union organizers in nonunion territory were held to be outsiders and not employees, that a struck plant operating near capacity no longer was "disputing" with its employees, that strikers were not considered to be "employees."

Immediately after the Duplex decision came the Truax decision,¹² exercising the Supreme Court's authority under the Fourteenth Amendment against a state anti-injunction law. In picketing a restaurant striking waiters had used insulting and loud appeals to customers, group picketing, and misleading signs. The Arizona courts held this to be peaceful action protected by the new law, whose wording was very like that of the Clayton Act. The Supreme Court held the law, as thus interpreted, to be unconstitutional. Taft said that under it employers were no longer given protection of the law equally with other complainants, though Pitney argued for the minority that the Constitution was satisfied if all employers were treated alike. The Court held, too, that the failure of Arizona to give an injunction took property rights from Truax unreasonably, without "due process of law."

Partly as a result of these decisions, the other state laws (those of Kansas, Minnesota, Utah, North Dakota, Oregon, Washington, Wisconsin, and fragmentary laws passed in 1925 and 1926 by Illinois and New Jersey) were interpreted very narrowly by the state courts, but they did not prevent a trend in New York toward greater liberality as to boycotts and other union actions. Since judge-made law is rarely attacked as violating the federal Constitution, though statutes often are, the unions of New York found themselves better off without an anti-injunction law than were those who had one. Like all state legislation, these laws were subject to the double check of the state and the federal judiciary. The Arizona law was not stopped till the second hurdle; those of Kansas and the others were stopped by the first.¹³

NEW ANTI-INJUNCTION LAWS

1921-32. After the 1921 decisions showed the limitations of the Clayton Act, the A.F.L. returned to the fight for a federal law. Andrew Furuseth, leader of the Seamen, student of injunctions, and A.F.L. lobbyist, proposed that injunctions protect only tangible property. This amounted to abolishing

¹² (1921) 257 U.S. 312.

¹³ E.g., the two fragmentary anti-injunction laws were very narrowly construed in the *Gevas Case* (1926) 99 N.J.Eq. 770 and the *Ossey Case* (1927) 326 Ill. 405.

them. This rule was worded to cover all injunctions, not only labor injunctions, in order to get round the Supreme Court's interpretation of "equal protection" in the *Truax Case*, but this wide coverage aroused lawyers against the measure (the Shipstead Bill). A new bill was prepared, covering the same general field as that covered by the Clayton Act clauses, but in greater detail so that judges could not so easily interpret the law away as they had in the Clayton Act. If the law was too stringent, the Supreme Court might hold it unconstitutional, as it had the Arizona statute. The new bill had three features which would presumably help prevent this. It rested on Congress' claim under the Constitution to complete control over the lower federal courts and their jurisdiction. It undertook to limit injunctions but left the damage-suit remedy. And it permitted (except in Sections 3, 5, and 6) injunctions against fraud or intimidation; that is, it did not confine the company to its rights under the criminal law. On the other hand, it could be charged with denying the equal protection of the laws as much as the Arizona statute had been.

This Norris-La Guardia bill became a law on March 23, 1932, after three years of business decline, when labor, though little organized and rarely striking, was growing to expect and demand some legislative concessions.

Legalization of unionizing and other peaceful projects. The most important part of the bill was the part that told what cases it covered, that is, that defined a "labor dispute." In this Section 13 Congress undertook to repeal the Duplex decision and to legalize most sympathetic actions by unionists, for the bill said that disputes within an industry should be covered "regardless of whether or not the disputants stand in the proximate relation of employer and employee." This seems to legalize refusals to work on non-union materials in support of either a strike or a unionizing campaign. To be sure, there is the question of where one "industry" stops and another begins. An attempt to stretch the area over which sympathetic action would be permitted was made by adding, before the bill was passed, a statement that the act was to include cases between any persons who have "direct or indirect interests" in the same industry and cases involving "any conflicting or competing interests" in a labor dispute. This seems to widen the bill to include sympathetic picketing of retailers in support of either a strike or a unionizing campaign.

The law does not altogether forbid injunctions in these boycott cases, but Section 4 lists acts which courts may not enjoin:

- (a) Stopping work.
- (b) Joining a union despite having signed a yellow-dog contract (having promised the company not to join a union).

- (c) Paying benefits to strikers.
- (d) Defending anyone in court.
- (e) "Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or any other method not involving fraud or violence."
- (f) Assembling peaceably.
- (g) Notifying people that one is going to do any of these things.
- (h) Agreeing with others to do them.
- (i) Urging, without fraud or violence, that others do these things, even if they have signed yellow-dog contracts.

This list protects most of the usual and useful tactics of unions in labor dispute.

To be sure, the Clayton Act contained similar language, and it led to the Duplex decision; the Act permitted only *lawful* boycotting, and the Court found an *unlawful* conspiracy. Section 5 of the 1932 law is aimed at this sort of trust lawsuit (and at the other frequent uses of "conspiracy" charges in labor cases) by stating that injunctions should not be based on the charge of conspiracy to do the things listed in Section 4. But even without this clause, the 1932 law seems to meet the Duplex decision by its definition of "labor dispute" and by its omission of the word "unlawful" from Section 4.

The ban on injunctions against unlawful projects helps unions in strike situations. The ban in cases of sympathetic action helps unions either in strikes or unionizing campaigns. There is also a part of the 1932 statute which related only to unionizing—the clause against the "yellow-dog contract." We have seen that this contract or antiunion promise (really a notice to the worker that he would be fired if he expressed an interest in the union) became the basis for injunctions totally restraining union organizers from contact with closed nonunion shops. In 1929 Wisconsin had passed a law outlawing the yellow-dog contract as contrary to public policy. This withdrew legal protection from it and this prevented companies from suing for injunctions or damages if a union "induced" workers to break it. In 1930 the Massachusetts court said that such laws were invalid,¹⁴ but state after state in which organized labor was pressing for a broad anti-injunction law adopted this narrow form withdrawing legal efficacy from the yellow-dog contract.

It was part of the 1932 law, too. This clause (Section 3) is one of the few sections that bans damage suits as well as injunctions. It was thought that the Supreme Court might hold the clause void because of this. Even if it did, federal yellow-dog injunctions would still be hard to get, since

¹⁴ *In re Opinion of the Justices* (Mass., 1930) 171 N.E. 234.

Section 4 ([b] and [i]) covered becoming a union member and advising others to do so. Moreover, Section 8 required a company asking for an injunction to show that it had tried to settle the dispute by negotiation, presumably with the union.

Section 2 is the declaration of public policy written for the guidance of judges in interpreting the statute. It points out that unions and the power to strike are important to workers, and justifies the statute's negative legal aids to unions on that basis. The section mostly stresses the worker's need for "full freedom of association, self-organization, and designation of representatives of his own choosing," and thus points to the yellow-dog unionization clause that follows, and perhaps to those parts of Section 4 which we have seen aid unions in ununionized situations as well as unionized ones. In all these cases the union's legal freedom to communicate to nonunion men is what is directly involved; but one may read into this a concern for the nonunionist's legal claim to access to information about unions.

The statute does not, however, follow up this public-policy statement by positively granting a legal right, either to the union propagandist or to the employee who wants to attend a union meeting to find out what it's all about, against a company's discriminatory discharge or other antiunion activity. This follow-up came a little later (see Chapters 30 and 31).

It seems, then, that a company could apply to a federal court for an injunction against an entire suspect project only when the sympathizing union had not even an indirect economic interest in the outcome of the dispute; and for an injunction against specific union methods only as to fraud or violence (regardless of the sort of strike or boycott) under Section 4(e). Unionists would prefer to do without even these injunctions. They wonder why the sympathizing union is striking if it has no interest; and they feel that the criminal law guards the employer against violence.

Reforms of procedure. Since 1932 injunctions have been applied for under 4 (e), but the companies' lawyers have found themselves hampered by a long list of procedural reforms applying to all federal injunctions in labor disputes as defined by the statute. As with the Clayton Act, these reforms had the support of many lawyers who did not want to help unions but who felt that the use of labor injunctions often violated legal traditions.

The first reform, in Section 6, provides that union members¹⁵ are not to be held responsible for the unlawful acts of other members or officers unless they authorized or ratified them. This prevents sweeping injunctions. It might even prevent another *Danbury Hatters* suit if it were not for the

¹⁵ The statute runs in general terms. It reduces the rights of all complainants in labor dispute cases. Thus, if a union sued an employers' association, the association members could claim the protection of Section 6 (also Sections 7-12).

fact that in that case the Supreme Court held that the members' silence gave consent. That was a suit for damages. Section 6 covers damage suits, but the next sections (7-12) apply only to injunctions.

We have seen that temporary restraining orders have often been issued without notice to the union and allowed to run for some time, during the crucial part of the strike, without the union's being able to present its side adequately. Similarly, the delays in appeal have made it useless for a union to try to vindicate itself in this way. Section 7 does not forbid temporary restraining orders, but it does limit their life to five days and requires the company to post a bond to pay the union if the order turns out to have been issued incorrectly. Before issuing an order the judge has to make findings of fact and the activities his order forbids are to be limited by these findings (Section 9). When appealed, labor cases are to have precedence over all others (Section 10).

Section 7 also provides that, after the court hearings, which have provided the union with an opportunity to present witnesses and to cross-examine the company witnesses, when the court is considering the application for an injunction, it must first find that a damage suit would not be an adequate remedy. This is traditional in all injunction cases. The court must find that, "as to each item of relief," its denial would harm the company more than the union. This rule too, though new, is founded on tradition, and must be taken to refer to the union's legitimate, not unlawful, interests.

The court must have notified the police of the hearing and may not issue an order unless the latter "are unable or unwilling to furnish adequate protection," under the criminal laws against intimidation.

The company must show (Section 8) that it has fulfilled its legal obligations. This may refer to possible breach of its collective agreement by the company. Since 1933 this may also refer to the company's duty not to interfere with its employees' self-organization. The company must also show that it has made every reasonable effort to settle the dispute by negotiation, mediation, or arbitration. This section is an extension of the tradition that a complainant with "unclean hands" may not claim an injunction.

The Clayton Act provided jury trial in federal contempt cases, if the wrong done was a federal or state crime. Section 11 of the Norris-La Guardia Act provides it, in labor cases, even if the wrong was not a crime. Section 12 covers contempts arising out of an attack on the conduct of a judge, made outside of court; whether it is a labor case or not, the defendant has the right to demand that the case be heard by a different judge.

State laws. Anti-injunction laws similar to the Norris-La Guardia Act have been passed by many states. Sometimes they superseded existing frag-

mentary laws: the remnants of laws similar to the Clayton Act; partial laws passed in the 1920's and 1930's in Illinois,¹⁶ New Jersey, Pennsylvania, Wisconsin, and Massachusetts; and the more recent laws against yellow-dog injunctions in Arizona, California, Colorado, Illinois, Massachusetts, New York, Ohio, and Pennsylvania. By the end of 1937 full laws existed in fourteen states: Colorado, Idaho, Indiana, Louisiana, Maryland, Minnesota, New York, North Dakota, Oregon, Pennsylvania, Utah, Washington, Wisconsin, and Wyoming. Besides these, Maine passed a law in 1933 without a yellow-dog clause; Rhode Island passed one in 1936 without a jury clause.

INTERPRETATION OF NEW ANTI-INJUNCTION LAWS

After the passage of the new anti-injunction laws it was the function of company lawyers to try to get injunctions despite them, especially since unions were growing and there were many strikes. On the whole they had poor success and often did not even try. In 1937, in the *Senn* decision, the Supreme Court pronounced in favor of the anti-injunction laws.

Under the new laws, if the union was peaceful but was picketing in the absence of a strike, striking for the closed shop, or doing something else which courts have held to be basically unlawful, the company attorney's hope of getting an old-fashioned injunction against peaceful picketing lay in demonstrating that there was not really a "labor dispute."

If the union was using intimidation, the company had a claim to an injunction, but if it wanted to get it instead of relying on the criminal law and the police, it faced the necessity of showing that police protection was inadequate, that the company had tried mediation, and so on. The attorney would try to get the court to make its inquiry into these points as perfunctory as possible and would try, as in the past, to get the courts to stretch the concepts of force and fraud. Or he would, as in the peaceful picketing case, argue that a boycott or a closed-shop strike was not a labor dispute. He might even argue that the use of force removed the union from the protection of the law. If he succeeded in one of these pleas, the old-fashioned, easier rules applied; and he might even (in some courts) have all picketing forbidden on the excuse that the union had abused its privileges.

The attorney's problem, in short, was not so very different from what it had been before. If he used to say that secondary picketing was unreasonable because there was no direct relation between the retailer and the union, he now said that there was no labor dispute between the retailer and the union, and that secondary picketing was unreasonable.

¹⁶ The Illinois law used Clayton-Act language and at first had little effect. *Ossey Case* (1927) 326 Ill. 405. But in 1935 it was construed to permit picketing a nonunion plant. *Dr. Leitzman Case*, 282 Ill. App. 203.

The Senn Case. A suit was brought in 1935, under the Wisconsin law, which employers were to make into a test case. The tile-layers' union was trying to unionize the shop of Paul Senn, a small contractor. They stationed two to four pickets in front of his home where he had his office. He did almost all the tile-laying himself, and the central question was whether he could be made to stop working at the trade and give the jobs to journey-men tile-layers. Was this a legitimate demand protecting a justifiable economic interest of the union? Moreover, was the related demand for a closed union shop also legitimate? The Wisconsin courts did not have to decide—the anti-injunction law had deprived them of the power of forbidding peaceful picketing in a labor dispute. But was it a labor dispute? It was not a strike of Senn employees. It was an attempt to influence potential customers so as to “unionize” the shop. Senn was willing to hire union help instead of nonunion, but he urged that he had a right to work at the trade himself. He had tried to join the union but had been refused because he had not served as an apprentice.

The Wisconsin law was very similar to the federal. The Wisconsin courts (contradicting a number of lower federal courts in similar cases) said that there was a labor dispute, despite the fact that picketing was in the absence of a strike, despite the closed-shop demand, despite the rule against employers' working. No injunction was granted.

Was such a law constitutional? The Wisconsin courts said it was. To be sure, if the law had limited injunctions only, it would have been attacked as taking away powers from courts which had been set up by the Wisconsin constitution itself. But the legislature had not so restricted it. The law limited both injunctions and damage suits; it simply declared all peaceful picketing to be lawful. Thus the courts were still able to accept damage suits and injunction suits alike—subject to the new rule. To be sure, the new rules were open to attack as too drastic. But the Wisconsin courts rejected that attack, too, and so Senn's case was appealed to the United States Supreme Court. Here the plea of “too drastic” was made, as it had been in the *Truax Case* by the claim that the law, in denying injunctions to employers while granting them to other complainants, denied the equal protection of the laws to employers. The Court replied that, since the statute took away from them their right to sue the union at all in cases like this, the question of the method of relief did not even arise. The law was held valid under the federal Constitution, five to two.¹⁷

In contrast to the Wisconsin law, the Norris-La Guardia Act had been

¹⁷ *Senn v. Tile Layers* (1937) 301 U.S. 468. This attitude toward “equal protection” seemed to attempt to limit the phrase to procedure and method. Traditionally the Court has invoked it also against legislation that altered what was lawful. The Senn decision came only seventeen months after the suit began, in contrast to the earlier practice as shown in the *Hitchman* or the *Danbury* case. Delay makes more difference to labor litigants than to others.

drawn up to apply only to injunction suits; the theory was that the Court might relax the Truax precedent enough to let the law through, provided it was not too drastic but left the company its right to sue for damages. The Senn decision left the Court's attitude toward *anti-injunction* laws technically undecided, but it was generally felt that the Wisconsin law was the more drastic form, and that if it was valid, the Norris-La Guardia Act was; that to cover employers alone was "reasonable classification."

Justice Brandeis, the author of the dissent in the *Duplex* and *Bedford* cases, wrote the Court's Senn opinion. He said that not only does the Constitution not prevent the legislature from legalizing picketing, but that legislation is not necessary to permit it, "for freedom of speech is guaranteed by the Federal Constitution." This implies (though perhaps the majority of the Court would not approve the position) that an injunction against peaceful picketing is unconstitutional; and that the laws against it, mentioned in Chapter 27, are unconstitutional. But no encouragement is given to violence; in fact, the opinion asserts that it is not overruling the Truax decision, since in that case the union used libel and intimidation.

Is it a "labor dispute"? In 1938, the Court reached the federal anti-injunction law in the *Lauf Case*.¹⁸ The Amalgamated Meat Cutters and Butcher Workmen picketed the Shinner meat markets in Milwaukee, Wisconsin, to unionize them "in the absence of a strike." The federal district court there found that employees said they did not want to join the union, that the union's pickets intimidated customers and carried false signs (the placard used as evidence said "unfair to meat cutters union"). One of the demands was a closed shop. The court forbade all picketing, all statements that the company was "unfair," and all persuasion of customers. The Circuit Court upheld this position. The Supreme Court rejected it, five to two.

Looking back to the Wisconsin court's ruling in the *Senn Case*, the Court noted that in Wisconsin peaceful picketing and persuasion were lawful in a "labor dispute" and that the union's being an outsider and demanding a closed shop did not keep its demand from being a "labor dispute." The Court said that the federal courts, in "diversity" cases, were bound to follow state statutes. It said that the company cannot secure an injunction against fraud or violence from a federal court until it has followed the procedures of the Norris-La Guardia Act. In a general way this ruling validated the Act, though there were many details of those procedures that remained to be settled.

In the *Lauf Case*, the company lawyer, arguing before the Supreme Court, urged union lawlessness as one justification for waiving the Norris-

¹⁸ *Lauf v. E. G. Shinner & Co., Inc.* (1938) 303 U.S. 323.

La Guardia Act until the Chief Justice asked: "Does lawlessness make what otherwise would be a labor dispute, no longer a labor dispute?" The Court was to answer in the negative although other courts have answered in the affirmative, as when, for instance, a Pennsylvania court said that a sit-down strike was no "dispute."¹⁹

These decisions of the Supreme Court bind the federal courts, but not the state courts, in their interpretation of the state laws. Thus Wilson and Company, meat packers, were unable to get a federal injunction against picketing by pleading that a secondary boycott and a closed-shop demand violated the Sherman Act.²⁰ A Pennsylvania court rejected a similar complaint of the Atlantic Refining Company,²¹ but the Oregon Supreme Court, refusing another injunction, felt it necessary to determine first that the union's methods were legitimate and that the closed shop was not an essential part of its demands (that there was a "labor dispute").²² The Washington Supreme Court, too, held that picketing for the closed shop was not a labor dispute,²³ as did the Massachusetts Supreme Court.²⁴

Secondary picketing (aside from closed-shop demands) is treated in New York somewhat as we saw it was before the anti-injunction law. It is lawful to picket retailers, mentioning the specific product which is not to be bought,²⁵ but it is unlawful to make a generalized appeal against the retailer, such as is necessary where he has bought—not sausages for resale—but a neon sign.²⁶ In the former case the New York Court of Appeals stressed the union's interest in the price of the product and held that the manufacturer and retailer were in the same industry—had a "unity of interest." It found none in the latter case.

Picketing in the absence of a strike has been held part of a labor dispute in various cases since *Senn and Lauf*. The Wisconsin Supreme Court, on the same day it rejected Senn's petition, granted an injunction to the

¹⁹ *McNealy Case*, Court of Common Pleas, Philadelphia, December 31, 1937 (February, 1938) 6 I.J.A. 103.

²⁰ *Wilson and Company v. Birl*, U.S. District Court, Pennsylvania, Feb. 8, 1939, C.C.H., Par. 18,304. The union successfully picketed retailers in the Philadelphia area, arranging sympathetic strikes as well as refusals to handle Wilson meat.

²¹ *Atlantic Refining Company v. Cohen*, Pennsylvania, Court of Common Pleas, Oct. 1938, C.C.H., Par. 18,253.

²² *Starr v. Laundry Union* (1936) 63 Pacific (2d) 1104.

²³ *Adams v. Building Service Employees*, Supreme Court of Washington, Dec. 6, 1938, C.C.H., Par. 18,275. Cf. *Blanchard v. Golden Age Brewing Company* (1936) 88 Washington 320.

²⁴ *Simon v. Schwachman*, Supreme Judicial Court of Massachusetts, Dec. 16, 1938, C.C.H., Par. 18,274 (Meat Cutters).

²⁵ *Goldfinger v. Feintuch* (1937) 276 N.Y. 281. This decision declared the New York law to be constitutional.

²⁶ *Canepa v. Doe* (1938) 277 N.Y. 52. Similarly, *Weil and Company v. Doe*, New York Supreme Court (lower court), Sept. 1, 1938, C.C.H., Par. 18,235. The Canepa decision is rather cryptic; it may mean only that, the secondary picketing being unlawful, a damage suit is possible, even though an injunction against peaceful picketing is not.

American Furniture Company but confined it to forbidding intimidation.²⁷ A Pennsylvania court held that there was no strike if most of the employees remained at work but ruled that there was nevertheless a labor dispute.²⁸ On the other hand, an Illinois appellate court held that it was wrong for persons to picket who were not former or expectant employees;²⁹ the Pennsylvania Supreme Court has forbidden picketing in the absence of a strike when the closed shop was demanded and the picketing had been intimidating.³⁰

The "picketing in the absence of a strike" in the *Senn Case* was unusual in that the owner did all or nearly all the work, and in that his displacement was aimed at. The Supreme Court refused an injunction, and the Missouri federal court has followed it,³¹ but the state courts have not, including the Court of Appeals of the State of New York.³² The lower New York courts, too, have protected the family shop³³ but not a corporation whose "stockholders" did the work.³⁴

Another special case of "picketing in the absence of a strike" is picketing by Negroes to get employers to agree to hire a certain proportion of Negroes. The Supreme Court has held this to be a labor dispute.³⁵ A lower New York court followed this lead,³⁶ but another did not, warning that picketing by white workers might follow and enough bitterness be engendered to cause race riots.³⁷ A Pennsylvania court likewise dissented.³⁸

New York courts have found "no labor dispute" on several rather unusual pleas. In one case picketing interfered with the process of liquidating a bankrupt's assets;³⁹ in another the union was held illegal, since it

²⁷ (1936) 268 N.W. 250. The dissent stressed the fact that the employees had chosen a different union.

²⁸ *Davis v. McGuigan* (candy workers), Pennsylvania, Court of Common Pleas, May 8, 1939, C.C.H., Par. 18,356.

²⁹ *Swing v. A.F.L.*, Illinois App. Court, First District, Dec. 21, 1938, C.C.H., Par. 18,273.

³⁰ *Yale Knitting Mills Case*, Pennsylvania Supreme Court, Mar. 22, 1939, C.C.H., Par. 18,331.

³¹ *Rohde v. Dighton*, 4 Labor Relations Reporter 139, March 27, 1939. This is a typical case: the owners of a small moving-picture theater took over the work of projection.

³² *Thompson v. Boekhout* (1937) 273 N.Y. 390.

³³ *Bieber Case*, Aug. 2, 1938, C.C.H., Par. 18,223. *Pitter Case*, Sept. 3, 1938, C.C.H., Par. 18,234. *Gips Case*, Jan. 9, 1939, C.C.H., Par. 18,286. In the *Botnick Case*, Sept. 10, 1938, C.C.H., Par. 18,242, the court adhered to the rule, but postponed action because it was not sure that outside help was not employed.

³⁴ *Boro Park Sanitary Live Poultry Market v. Heller* (Teamsters), April 3, 1939, C.C.H., Par. 18,334.

³⁵ *New Negro Alliance v. Sanitary Grocery Company* (1938) 303 U.S. 552.

³⁶ *Anora Amusement Corp. v. "John Doe,"* President of the Negro Youth Association of Corona, *New York Law Journal*, March 31, 1939, p. 1481.

³⁷ *Joseph Victori and Co., Inc. v. Palmer*, *New York Law Journal*, Jan. 2, 1939, p. 324, col. 3. The same judge ruled the same way before the anti-injunction law, in *A. S. Beck Shoe Corp. v. Johnson* (1934) 274 N.Y. Supp. 946.

³⁸ *Stevens v. West Philadelphia Youths' Civic League*, 3 Labor Relations Reporter 691, Jan. 30, 1939.

³⁹ *Wishny v. "John Jones,"* New York Supreme Court (lower court), Oct. 29, 1938, C.C.H., Par. 18,258.

had been refused approval by the New York Board of Standards.⁴⁰ In another case the company had signed with the union because the union told it that its competitors had signed. When it found out differently, it broke the agreement and the union tried to justify its picketing by asserting that it was trying to enforce an existing agreement. The judge ruled that it was not free to enforce in that way an agreement obtained by fraud.⁴¹ It would be interesting to know what he would have said if the union had merely claimed to be picketing as part of a strike or unionizing effort.

Purposes other than the closed shop have been advanced as being unusual and therefore not in the category of a "labor dispute." One of these is price raising. The Minnesota Supreme Court held it legal under the state statute for a union to picket a price cutter; it pointed out that part of the drivers' wages were customarily paid as a commission or per cent of the price.⁴² But a federal court granted an injunction to the Scavenger Service Corporation in Chicago. In 1933 most of the members of the independent Chicago Teamsters' Union had gone over to a new local set up by the A.F.L. Teamsters. The company, employing members of the old union, cut prices to chain stores and buildings. When it refused to employ members of the new Teamsters' local, that group picketed buildings that were customers of the company. The firm then asked that its employees be allowed to join the local, but the local refused to accept them. The firm changed its incorporation from Illinois to Delaware and brought suit in a federal court and, on appeal, secured an injunction against the secondary picketing on the ground that there was no labor dispute but a conspiracy with unionized employers to keep up prices (which the union thought would keep up wages).⁴³

This Chicago case involved a fight between two teamster unions; it was one sort of jurisdictional dispute. These disputes are deplored by the courts and are frequently classified as "no labor dispute." Nevertheless, some courts have said that they would not grant an injunction against picketing by one union until the other had definitely been declared the majority union and official bargaining agency by the National Labor Relations Board. The National Labor Relations Act asserts that it does not limit freedom to strike, but this rule may perhaps not cover picketing in the absence of a strike. (See Chapter 31.)

⁴⁰ *Hoffman Vegetarian Restaurant v. Lee*, New York Supreme Court (lower court), Jan. 17, 1939, C.C.H., Par. 18,299.

⁴¹ *Bard Case*, New York Supreme Court (lower court), Dec. 3, 1938, C.C.H., Par. 18,270.

⁴² *Lichterman v. Laundry and Dry Cleaning Drivers' Union*, Minnesota Supreme Court, Dec. 9, 1938, C.C.H., Par. 18,278.

⁴³ *Scavenger Service Corp. v. Courtney* (1936) 85 F. (2d) 825. Such conspiracies have often been attacked under the Sherman Act, as we saw in the last section of Chapter 28.

Adequacy of the police. To get an injunction against intimidation, the company must show that it has tried to settle the dispute and that the police are inadequate. These procedural requirements have proved to be very elastic. In the *Orlando Mills Case* a lower New York court refused relief because the firm had not used all reasonable efforts to settle.⁴⁴ The Norris-La Guardia Act seems to mean that mediation must be tried, but a Circuit Court in the *Donnelly Case* found difficulty in "visualizing what reasonable effort the plaintiffs could or should have made to settle their controversy with the defendant union."⁴⁵ In the *Busch Case* (Chapter 27) the New York judge found that precinct police captains determined the number of pickets, depending on the size of the store front, width of sidewalk, amount of traffic, and so on. He was of the opinion that the captain was wrong to allow any picketing, that the union by blocking the store entrance, had forfeited its right to any. So he found that "there is no adequate police protection in the sense that the judgment used in permitting to continue the type of picketing is violative of law and order, and of the constitutional rights of the plaintiffs, and that as conducted such picketing operates to breach the public peace."⁴⁶ In a case involving a wholesale dairy the union picketed retailers; though only a few were picketed, the New York court found that there were nine hundred retailers and held that the police could not protect them all. It held that the company did not have to negotiate to try to settle when its "business was being destroyed." The union also claimed that there was no evidence that it was responsible for the violence that had occurred, but the court presumed that it was (despite the anti-injunction law).⁴⁷ The findings of lower courts as to facts—for instance, as to negotiation, policing, responsibility—are typically subject to rather limited review by the high courts; as a result the New York Court of Appeals, in a case in which the findings on policing and negotiation were challenged, upheld the lower court and set a precedent of loose interpretation.⁴⁸

In this chapter we have seen that the chief legal vehicle for charges against unions has been the injunction, which could not usually be appealed until the dispute was over and violations of which were punished without jury trial. The injunction was used to forbid or punish intimidation or the use of misleading signs and also to forbid communication in the case of

⁴⁴ *Orlando Mills v. Levenson*, New York Supreme Court (lower court), June 15, 1938, C.C.H., Par. 18,207.

⁴⁵ *Donnelly Garment Co. v. I.L.G.W.U.*, U. S. Circuit Court of Appeals, 8th Circuit, October 28, 1938, C.C.H., Par. 18,255.

⁴⁶ *Busch Jewelry Co., Inc., v. United Retail Employees' Union, Local 830* (New York, 1938), 168 Misc. 224.

⁴⁷ *Grandview Dairy Case* (1936) reported in (July 1936) 5 IJA 7-8.

⁴⁸ *Remington-Rand v. Crofoot* (New York, 1936), 248 App. Div. 356, affirmed without opinion (1938) 279 N.Y. 65.

boycotts and other suspect projects. Early laws limiting labor injunctions were overruled by the courts. Recently more detailed laws have been passed by many states and by Congress and these have been accepted more fully. They inaugurated jury trial for violations and put more burden of proof on the complainants. They legitimized peaceful boycotts and closed-shop strikes and the like by legitimatizing communication. Some judges have construed narrowly the new laws' requirements that no injunction against intimidation be issued if police protection is adequate or if the company has not tried to settle by negotiation. The laws limit injunctions only in cases involving "labor disputes" and many judges have construed the term narrowly, so that, despite the new laws, injunctions have frequently been issued in cases of demands for the closed shop, for the replacement of a working proprietor by a union man, or for the maintenance of prices; they have also been obtained in cases of jurisdictional disputes, secondary picketing and other picketing in the absence of a strike, and violent picketing.

SUPPLEMENTARY READINGS

(See also "General Readings" at the end of Chapter 27.)

- BERMAN, EDWARD, *Labor and the Sherman Act*. Harper & Brothers. New York. 1930. Chapter 6, "The Clayton Act and the Duplex Case."
- BRISSENDEN, PAUL F., "Campaign Against the Labor Injunction," *American Economic Review* (March, 1933), Vol. 23, No. 1.
- FRANKFURTER, FELIX, and NATHAN GREENE, *The Labor Injunction*. The Macmillan Company. New York. 1930.
- SWAYZEE, C. O., *Contempt of Court in Labor Injunction Cases*. Columbia University Press. New York. 1935.
- WITTE, EDWIN E., *The Government in Labor Disputes*. McGraw-Hill Book Company. New York. 1932. Chapters 5, 6, 12, and their Bibliographical Notes.

QUESTIONS

1. What union activities were restrained by injunctions, in Chapter 27? In Chapter 28?
2. Which would not have been restrained if anti-injunction laws had been in operation?
3. Are different anti-injunction clauses relevant to Chapter 27 and Chapter 28?
4. Have unions used the injunction against employers or police excesses? What evidence is there in Chapters 27-29?
5. What difference does it make to unionists whether there is a jury trial?
6. Does the issuance of an injunction in a labor dispute influence the attitude of the public toward the strike and the union? Does it influence the attitude of the strikers? In which direction?
7. "The Clayton Act did nothing for unionists, but it was a *magna charta* for the employer; it enabled him to get what he wanted, a federal injunction." True?

8. Do anti-injunction laws condone violence and intimidation?
9. What relation have negotiation, mediation, and arbitration to the question whether a judge may issue an order against intimidation?
10. Define in ordinary words a "labor dispute" as the anti-injunction laws cover it. Why is a definition needed?

30 . . .

ARBITRATION AND ANTIDISCRIMINATION LAWS

THIS chapter will take up government's part in mediation and voluntary arbitration as methods of settling labor disputes. These methods are sometimes associated with government bans on antiunion discrimination, for instance, in the railroad industry. These bans culminated in the labor relations laws of 1935-37, details of which are given in the following chapter.

MEDIATION AND ARBITRATION

What are the differences between negotiation, mediation, and arbitration? Bargaining between representatives of labor and of management is negotiation. If an outsider tries to help along the process, he is mediating. If the parties entrust to an outsider the task of deciding disputed points, he is an arbitrator.

Government may set up a committee to inquire into a situation before or during a strike, in order to publish an opinion about it. This is called investigation. Government may set up a system of compulsory investigation, requiring the parties to delay a suspension of work till the committee has recommended a settlement. The Government may enforce awards reached by voluntary arbitration. These last two methods embody compulsion but fall short of compulsory arbitration itself, under which strikes are entirely forbidden and the parties must submit their differences for investigation and arbitration and must accept its award.

Mediation may be conducted by professional government mediators or by prominent government officials or prominent private persons. Its function may be to win the confidence of both sides, in the hope of finding that, behind the bold statements of both, they are not really far apart in their demands. It may function by proposing new formulas or by showing one or both sides that the other is stronger than it thought. While a professional mediator will confine himself to private talks, a governor or other prominent person mediating may bring the matter into the field of public opinion by making his proposal public or by openly demanding arbitration—with the expectation that neither side will be willing to refuse a proposal which the public is inclined to think reasonable because it was made by the mediator. In making public a compromise proposal, such a mediator functions as a public investigating committee in that he helps one side or the other, whichever would, in the absence of the new factor (the mediator's proposal) have lacked the economic strength to win better terms by holding out. In contrast, the mediator who confines himself to private negotiation, if he is successful, seems to do no more than get the strike over with sooner (or prevent a strike from occurring). In situations where collective bargaining is well established, neither of the parties is much interested in his mediation. In less well-organized situations it is his function, in finding a basis for settlement, to get the company to talk to the unionists and sign some sort of agreement. To this extent his influence favors the struggling union.¹

If the mediator recommends arbitration, he seems to be recommending something that is no more favorable to one than to the other, for theoretically the job of the arbitrator is to figure out what the outcome of a strike would be, and make his award on that basis; his duty is to prevent a strike, not to change the relative power of the two sides. In practice there are important qualifications to this theory. (1) Even if he takes as his task simple prevention, he cannot easily measure the relative strength of the parties. Not only can he not clearly foresee how many men will strike and how much money they have in banks or in union reserves, or just what business the companies will lose; neither can he foresee just what tactics each side would use in the strike to advance its position and what help each might get from governmental agencies. He guesses about these factors and tries to convince the parties that he is right, but he is practically certain to be disbelieved by both sides; each side will complain about the award. (2) He may imagine (as many people do) that there is a just wage rate which he is to discover and apply. Or, if not that, he is likely to be influenced by what his experience has taught him is normal. If he is dealing with a sub-

¹ See, for instance, the mediating diplomacy of John Mitchell, ex-president of the United Mine Workers, described in Elsie Glück, *John Mitchell, Miner: Labor's Bargain with the Gilded Age*. The John Day Company. New York, 1929. Pp. 250-52.

merged group, this norm is likely to benefit them—give them more than their striking power would. If he is dealing with a strong union, it is likely to give them less than they would otherwise get.

MOVES TOWARD ARBITRATION AND AGAINST DISCRIMINATION, 1886-1920

The upsurge of unions in the 1880's and 1890's led to the creation of several state boards of arbitration and mediation, notably in New York and Massachusetts in the peak year 1886. Many states also passed laws providing machinery for selecting arbitrators for particular disputes and providing for some pay for them out of state funds. But these laws lay unused, as did most of the laws creating state boards. As state labor departments were created, they sometimes undertook to mediate and often recommended arbitration. When arbitration was used, however, it was a purely private affair.

The federal government early assumed responsibility for regulating the railroads where before 1900 some of the strongest unions and some of the fiercest strikes were to be found. Congress took up the arbitration idea for the railroads and embodied it in law in 1888. This statute was unused, except for a belated investigation of the Pullman strike. In 1898 the Erdman Act replaced it. This law put greater emphasis on mediation and also incorporated another sort of legislation—which a number of states had adopted—that is, a clause making it a misdemeanor for the employing company to require a yellow-dog contract. Discrimination against unionists in hiring was one of organized labor's chief complaints. However, the Supreme Court voided the clause, in the *Adair* decision, just as state courts were voiding the state laws.² While employers made no secret of it that their reason for firing was union membership, enforcing those laws would have been hard once employers learned to give false reasons for firing.

Compulsory investigation. The Colorado coal troubles of 1913-14 were publicized by the federal Commission on Industrial Relations, whose investigation of labor problems had just begun. The publicity had two results: the company union or an employee-representation plan was given prominence when the Colorado Fuel and Iron Company introduced it; and the state legislature passed a law for compulsory investigation of labor disputes in coal and other essential industries. It was hoped that, when a dispute arose, the state labor commission's proposal for a settlement, after its investigation, would lay the basis for an agreement without a strike, especially

² J. R. Commons and J. B. Andrews, *Principles of Labor Legislation*. New York. Harper & Brothers. 1936. Pp. 405, 407, notes 113, 117. Cf. Joel Seidman, *The Yellow-Dog Contract*. Johns Hopkins University Press. Baltimore. 1932.

since there would have been thirty days for both sides to "cool off" in. No strikes were to be permitted during the thirty-day period of investigation. If strikes were called, picketing was not to be allowed. The law has hindered a number of strikes in Colorado, though a good many have been called which the commission did not bother to take notice of. A later court decision seemed to limit the law to public utilities.³

The Colorado pattern, which was to be adopted by Congress for the railroads in 1920, was also to be taken over in 1939 by Minnesota and Michigan. This Minnesota law said that a union must negotiate for ten days and then wait ten days more before striking, on penalty of having its strike enjoined. Michigan required a five-day notice. In Minnesota, notice of intention to strike was to be given to the state labor conciliator as well as to the company; in any business concerned with the public interest the governor could appoint an investigating commission. If he did so, a strike was forbidden for a thirty-day period, unless the commission's report was filed earlier. In Michigan, too, thirty days' notice was required in industries affecting the public interest, including hospitals and public utilities. Wisconsin at the same time made it an unfair labor practice to strike without ten days' notice, in the production, harvesting, or initial processing of farm products.

At the time that the Colorado trouble was beginning, the unpredictability of what an arbitrator will do led the chief railroad unions to insist on an amendment to the railroad law (the Newlands Act, 1913) permitting two arbitrators instead of one to sit. In 1916 these unions predicted that an arbitrator's norm would not change the ten-hour day to an eight-hour day and they threatened to strike for the eight-hour day with the same daily pay. As a result they got, through act of Congress (the Adamson Act), what "theoretical" arbitration would have given them (assuming that Congress and the President were not prepared to break the strike by force). In August, 1938, these chief unions, together with the other railway unions, were to refuse to arbitrate their resistance to a depression pay cut.

War measures. When the United States entered the World War, in 1917, high rates of production were causing many strikes which it seemed important to stop. The devices used included appeals to patriotism, a President's Mediation Commission, and later, arbitration, nominally voluntary, by the National War Labor Board. One of the Board's rules was that com-

³ *Industrial Commission v. Aladdin Theatre*, April 29, 1935, discussed in (June 1935) 4(1) I.J.A. 4-5. See C. E. Warne and M. E. Gaddis, "Eleven Years of Compulsory Investigation of Industrial Disputes in Colorado." *Journal of Political Economy* (October 1927). Vol. 35. No. 5. Pp. 657-83. The Colorado law was patterned on the Canadian law. See B. Selekman, *Law and Labor Relations: a Study of the Industrial Disputes Investigation Act of Canada*. Harvard University Graduate School of Business Administration. Cambridge. 1936.

panies which had not previously dealt with unions need not do so, but must at least bargain collectively with employee representatives within the company. In some cases these company unions were captured by outside unions; in others they continued to serve as antiunion instruments after the War. Another Board rule forbade companies to discharge employees for union membership and unions to use coercive measures. As to the railroads, after 1917 the United States ran them, and though the actual operation was still in the hands of the same executives, their behavior was influenced by the government's policy, which was favorable to unions. To iron out grievances, bipartisan adjustment boards were set up—on a national scale, as the unions wished it. Because of the need to win the War, representatives of management and men voted together in almost every case.

The year after the War, 1919, was a boom year characterized by continued union growth and strikes and union recognition. The National War Labor Board gradually ceased its arbitration. If after the War it was no longer able to insist that there be no discrimination against unionists, it also no longer kept unions from demanding recognition where they had not had it before. There were two reactions against the increased strength of the unions. One was the "open-shop" or antiunion drive; the other was a demand for compulsory arbitration.

The open-shop movement meant greater discrimination against union members and in favor of company union members. Compulsory arbitration was tried in Kansas. After the 1919 coal strike which was "forbidden" by the federal government, Kansas forbade strikes in industries affected with a public interest and referred the disputes to an Industrial Court. When the miners resisted their leaders went to jail. After a few years a meat-packing company got the federal Supreme Court to hold the law void, though it would probably have been held to apply to public-utility companies if that question had been brought to court.⁴

RAILROAD LEGISLATION, 1920-1934

Compulsory arbitration came close to being tried on the railroads. In 1920, when Congress was on the point of handing the railroads back to private ownership, it set up a Railroad Labor Board to hear disputes. It considered a proposal to make obedience to the Board's decisions compulsory, but did not accept it. It did include a clause announcing that it was the duty of both sides to "exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions." But when a union sued a com-

⁴ *Wolff Packing Company Cases* (1923) 262 U.S. 522, (1925) 267 U.S. 552. Cf. E. Berman, "The Supreme Court and Compulsory Arbitration," *American Economic Review* (March, 1928), Vol. 18, No. 1, p. 19. The Kansas pattern was borrowed from Australia and New Zealand. See, for instance, Commons and Andrews, *op. cit.*, pp. 439-47 and previous.

pany it found that this duty was not one which could be enforced against either side by the other one.⁵

Dissatisfaction with this situation, as well as with the Board (which, in 1922, had encouraged the railroads to form company unions when the shopmen would not postpone their strike at the Board's request), led the unions to frame a new law. In 1926, the railroad executives assenting to it, Congress enacted the measure, which is the basis of the present law. This 1926 law once more provided for the entrance of a Mediation Board if no agreement was reached in conference. It provided, as did its predecessor, for governmental arbitration if both sides consented. It provided for a Presidential committee of inquiry if none of these other devices worked. As under the Colorado system, for thirty days the company was not to cut wages nor was the union to strike, while the committee prepared a recommendation. If this was not accepted, suspension of work was permitted after another thirty-day wait.

The law did not, then, provide compulsory arbitration. It provided for compulsory acceptance of awards if arbitration were agreed to. This is still true. Then in 1934 there was added to the pattern a National Adjustment Board, created in the image of the wartime Adjustment Boards, whose interpretations of collective agreements and whose decisions on grievances, made either by the bipartisan board or by a special umpire, are binding. Though no major arbitration is made compulsory by this law, yet if there were threat of a considerable railroad suspension, Congress might pass emergency legislation providing for compulsory arbitration, or even "arbitrate" by itself setting terms through legislation, as it did in 1916 in the Adamson eight-hour law.⁶

Twelve years elapsed after the passage of the 1926 Act before the President appointed an emergency committee to investigate a nation-wide railroad dispute, mediation having failed to bring about either a direct settlement or arbitration. Meanwhile another part of the Act assumed importance. In 1926 Congress had added to its 1920 exhortation to bargain collectively another clause forbidding either side to interfere with the other's choice of representatives, in other words, with unionization. Again it omitted any enforcement clause, but again a union ventured to sue, and this time had greater success. The Supreme Court upheld an injunction against a railroad that had set up a company union.⁷ This precedent provided a legal weapon for the less well organized of the railroad unions such as the shopmen and the clerks. Rela-

⁵ *Pennsylvania . . . Federation Case* (1925) 267 U.S. 203.

⁶ The Supreme Court upheld this 1916 law on the ground that Congress had the power to provide compulsory arbitration for railroads. *Wilson v. New* (1917) 243 U.S. 332.

⁷ *Texas and New Orleans Case* (1930) 281 U.S. 548. The Court said: "Freedom of choice in the selection of representatives on each side of the dispute is the essential foundation of the statutory scheme." The Court of 1908 might have said the same, but did not; instead it nullified the yellow-dog clause of the 1898 Act in the Adair decision. The Court of 1930 denied that it was overruling the Court of 1908: "The Railway Labor Act of 1926 did not interfere with the normal exercise of the right of the carrier to select its employees or to discharge them." But neither did the 1898 Act interfere with the *normal* right to fire

tively little came of it during the next depression years. But the Roosevelt Administration in 1933 passed general railway legislation in which were included clauses against discrimination and company unions.⁸

At the same time (June, 1933) the N.R.A. law was passed, including Section 7(a), which assured employees under N.R.A. codes the "right to organize and bargain collectively through representatives of their own choosing," free from interference by employers, and especially from discriminatory discharge. The National Labor Board was created to mediate in strikes involving N.R.A. codes and 7(a). It "took upon itself the exercise of quasi-judicial functions, that is, of interpreting Section 7(a) in the light of the circumstances of particular disputes."⁹ It evolved a pattern which in 1935 became the National Labor Relations Act (N.L.R.A.).

The 1934 railroad law. During 1933-34, also, the railroad unions were pressing for a more definite statement of the rights they had been acquiring. The result was an amendment in 1934, which as we saw, created National Adjustment Boards for minor arbitrations and which also put new members on the Mediation Board and gave it the power to determine employees' choice of collective-bargaining representatives. For determining their choice, the Act contemplated a secret ballot in which a "majority" of any "craft or class" was to decide. In the elections held in the next few years, the contest was typically between one of the weaker independent unions and a company union—and the company union almost always lost.¹⁰

The 1934 version of the Act retains the 1920 obligation to bargain collectively. It is still without any enforcement provision, but is more definite, for it instructs the parties to agree on a time and place within ten days. The Act does provide penalties against railroads and their officers, namely, a fine of not less than \$1,000 or more than \$20,000 or imprisonment for not more than six months (or both fine and imprisonment) for each offense, each day of disobedience being considered a separate offense. The first wrong punishable by these penalties is the one condemned in the 1926 Act and the 1930 decision: interference with the choice of representatives, including the attempt to confine representatives to employees to the exclusion of outside union officials.

Other rules laid down by the Act (and backed by penalties) include the

⁸ The history of railroad labor relations is summarized in, among others, Twentieth Century Fund, *Government and Labor*. McGraw-Hill Book Company. New York. 1935; and National Mediation Board, *First Annual Report, 1934-5*. See also A. Bing, *War-Time Strikes*. E. P. Dutton. New York. 1921; H. D. Wolf, *Railroad Labor Board*. University of Chicago Press. Chicago. 1927. The 1933 Act specifically governing railroads was the Emergency Railroad Transportation Act. Before that, in March, 1933, Congress had included in the Bankruptcy Act clauses forbidding receivers of bankrupts (railroads or others) to interfere with self-organization.

⁹ L. Lorwin and A. Wubnig, *Labor Relations Boards*. Brookings Institution. Washington, D. C. 1935. P. 88.

¹⁰ National Mediation Board, *Third Annual Report, 1936-7*. Government Printing Office. Washington, D. C. Pp. 10-11.

following. No road is to interfere with the organization of its employees, or influence them to join or not to join, or give money to a company union or other union. Specifically, no one is to sign a yellow-dog contract, and roads then using them were to notify employees that they were abrogated. Penalties are provided if a company cuts wages or a union strikes without waiting for the intervention of the Mediation Board. All roads were ordered to display prominently and in large type the provisions just listed.

The Mediation Board has power to appoint arbitrators when the parties agree to arbitrate but fail to agree on names; it also has general supervision over the whole system set up by the statute, including the right of organization. However, unlike the National Labor Relations Board, it does not hear complaints of interference with organizing; it leaves these judicial functions to the federal courts, to whom unions may appeal through the federal district attorneys. Air transportation was added to the railway labor relations system in 1936. The shipping industry has also sought to come into it, to get more protection from strikes.

THE N.L.R.A.—FIRST PERIOD

In 1934, while the railroad bill was before Congress, Senator Wagner, head of the National Labor Board, introduced a bill designed to give Congressional approval to the details of his Board's interpretation of 7(a). More especially it provided a definite method of enforcement, which was needed because employers were paying the Board less and less respect, since under the N.R.A. law the Board only occasionally took away a recalcitrant company's Blue Eagle and in the *Weirton Case* the Department of Justice failed to get an injunction. Wagner proposed to follow the legal pattern of the Federal Trade Commission by having the Board issue "cease and desist" orders which the courts were to enforce; the latter could override the Board on questions of law but not of fact. The Board was also to mediate and arbitrate. This last proposal was dropped, partly because the federal Conciliation Service did not like to have its territory trespassed on and its functions are to mediate and recommend arbitration. The Conciliation Service did not itself arbitrate, since it felt that as an arbitrator it would be likely to acquire a prolabor or proemployer reputation which would eventually interfere with its mediation work. These same reasons were advanced for the creation of a separate board to interpret the proposed act—that different functions might conflict with each other.

Instead of the Wagner Bill the Senate committee reported a weak substitute. Congress postponed the issue by passing a stopgap, Public Resolution 44, which gave Congressional sanction to the Board's holding elections for collective-bargaining representatives—elections had been at issue in the *Weir-*

ton test case. Under the Resolution the President appointed boards (temporary, as it turned out) for the steel, longshore, and textile industries, in which there was serious trouble at the time. He also replaced the bipartisan National Labor Board by a National Labor Relations Board of three men. The regional labor boards, subsidiary to the N.L.B., were abolished in favor of regional directors and of trial examiners sent out from Washington.¹¹

The Wagner Act. In 1935 Wagner reintroduced his bill, and, two months after the N.R.A. was voided by the Supreme Court, Congress passed it as the National Labor Relations Act. Although the Supreme Court had approved the railroad law in the *Texas Case* in 1930, it had just invalidated the N.R.A. and there was consequently much doubt whether a federal labor relations law applying to manufacturing would be held valid. Some thought that this problem would be met if the states passed laws. Others thought that these, too, would be held valid only as they applied to public utilities. After all, state laws had *two* hurdles to jump—their own courts and the federal courts. Since in August, 1935, most state legislatures had adjourned for two years, this movement to supplement the N.L.R.A. was delayed. Meanwhile the Act was rapidly tested. Many companies did not wait to be condemned by the Board and to appeal to the Circuit Court in due course. Instead, they sought and often received injunctions against the hearings of the Board in the federal district courts. If investigation and publicity by the Board were cut down by these court orders, they were supplemented, on the other hand, by the Senate vote in 1936 creating the La Follette Committee to investigate denials of labor's civil rights.

The chief rationale of the Act's relation to interstate commerce is indicated in its first words:

The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife and unrest, which have the intent or the necessary effect of burdening or obstructing commerce.

The Act states its rationale further by explaining that strikes cause wage losses which cut buying, production, and commerce; and that unequal bargaining power (that is, labor's low power compared with what it might have) means low wage rates and therefore depressions which cut production and commerce.

The courts were divided as to the constitutionality of the N.L.R.A. Since it took a year and a half for the first cases to reach the Supreme Court, they

¹¹ Lorwin and Wubnig, *op. cit.*, Chap. 11 and preceding. See also National Labor Board, *Decisions*. Government Printing Office, Washington, D. C. 1934; (First) National Labor Relations Board, *Decisions*, 2 vols. Government Printing Office, Washington, D. C., 1935.

arrived just after the President's Supreme Court bill. So the N.L.R.A. shared with other New Deal legislation the advantage of the Court's *ad hoc* liberalism. The railroad law was upheld on March 29, 1937,¹² the N.L.R.A. on April 12, 1937. The N.L.R.A. was upheld as to the Washington, Virginia, and Maryland Coach Company, whose busses may be thought of as actual instruments of interstate commerce.¹³ It was upheld as to the Associated Press, which sends news across state lines by wire. It was upheld as to the Jones and Laughlin Steel Company, which not only received materials and sold products across state lines but also had subsidiaries in several states. It was upheld as to the large Fruehauf Trailer Company, which had a branch in Canada and retained legal title to the product it shipped to its dealers until it was paid for. It was upheld as to the Friedman-Harry Marks Clothing Company, which received almost all its materials and sold almost all its products across state lines. It, too, was held to be in "interstate commerce" and that indefinite phrase was stretched once more.¹⁴

SUPPLEMENTARY READINGS

(See also "General Readings" at the end of Chapter 27.)

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UNITED STATES NATIONAL MEDIATION BOARD, *Annual Reports*. National Mediation Board. Washington, D. C. 1935—.

¹² *Virginian Case* (1937) 300 U.S. 515.

¹³ (1937) 301 U.S. 142. Busses, trucks, and interurban railways are not under the Railway Labor Act and so are under the N.L.R.A.

¹⁴ *Ibid.*, pp. 103, 1, 49, and 58, respectively.

QUESTIONS

1. Is mediation a governmental function? Is arbitration? What instances are found in Book II?
2. In what ways has arbitration sometimes been compulsory? Are these ways now in use?
3. How may a public investigation affect unionists' and employers' willingness to settle? May it affect them by affecting public opinion?
4. Before 1900 did anyone beside unionists feel that discharge for union activity was wrong? Before 1935?
5. "The needs of a war crisis tend to repress union demands and unionism; on the other hand unionism gains because of a tight labor market and the government's need to enlist the support of all groups." True?
6. What new evidence does this chapter provide as to limits on freedom to strike in public utilities? Are there limits on the freedom of utility employers?
7. What are the provisions of the Railroad Labor Act as amended in 1934? Compare it to the N.L.R.A.

THE two main functions of the National Labor Relations Act (N.L.R.A.) are (1) to prevent antiunion discrimination and propaganda, and other interferences with workers' freedom to form their own organizations, and (2) to insure that employers make some effort to arrive at a collective agreement with the union if that union is the choice of the majority. Compliance by employers depends on legal enforcement of the Board's orders after review by the courts and on the notoriety which results from being tried, by an examiner, a board, or a court, for any crime which a large part of the community condemns.

Section 7(a) of the N.R.A. statute of 1933 seemed to perform those same two functions, but its wording was vague. Interpretation built it up into a body of principles which became a code of law through the N.L.R.A. of 1935, under which employers' "unfair labor practices" became illegal for the first time. The new law was not designed to add to the already existing laws against coercion by unions, but, on the ground that it did not do so, it was attacked as one-sided.

This chapter will discuss discriminatory discharge and related practices under the heads of "Discrimination," "Interferences," "Favored Unions," and "Strikers' Reinstatement." The duty of the company to bargain with a union which represents a majority will be discussed under "Refusal to Bargain" and "Elections." After that will come "Procedure and Enforcement" and "Alternative Labor Relations Patterns," including state laws and proposed amendments to the federal law.

DISCRIMINATION

Sec. 8. It shall be an unfair labor practice for an employer . . .

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act . . . shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

This quotation is the main part of the Act. A company is no longer legally free to discourage unions, for the Act made it the company's legal duty to stop firing people for belonging. In hiring, too, it was not to discriminate. Discrimination has in the past frequently been open. Applicants might be told to take an antiunion pledge (yellow-dog contract) or to join a company union. In industries covered by the Act, companies now find it advisable to keep discrimination motives secret; but as long as employees are aware that discrimination is practiced, it still discourages unionism.

The Board attacks discrimination on two fronts. (1) It threatens to penalize the company for certain acts which (as we shall see in later sections) create the fear of discrimination in employees; for instance, company sponsorship of antiunion speeches. And (2), as this section shows, the Board orders workers who have been discriminated against to be reinstated with back pay. All laws tend to deter as well as to punish, and these reinstatement orders deter companies from future discrimination and lessen the fear of it in the minds of the employees. Unlike most laws, this Act was given the Herculean task of clearing away, by those two methods, a great complex of fears.

The policy of firing and refusing to hire unionists (discrimination as to "hire or tenure of employment") may be a general one, applied to all suspects, or it may select especially active union members as a warning to the others. If it is a general closed nonunion shop policy, it may be so simply by general understanding, or it may be crystallized in a yellow-dog contract, or (what is more likely, since 1933) in a closed-shop agreement with a union dominated or favored by the company. In the *Club Troika Case* (2 N.L.R.B. 90, 93)¹ waiters were locked out and told that they could not be re-employed

¹ References like this are to the *Decisions and Orders of the National Labor Relations Board*. This one is to Vol. 2, to the case beginning on page 90, to the point made on page 93. The cases referred to will be samples, usually the earliest case, in which the Board decided the point. Additional cases bearing on each point can be found collected in each *Annual Report* of the N.L.R.B. under "Principles Established" (Board rulings) and "Litigation" (court rulings).

See also indexes in the volumes of *Decisions* and the General Readings at the end of Chapter 27.

while they were union men. In the *Greensboro Lumber Case* (1 N.R.L.B. 629, 634-35) one shift was favored over the other, which had more union men in it. In the *Santa Cruz Fruit Packing Case* the company contracted part of its work out to avoid rehiring unionists.² In the *National Motor Bearings Case* the company shut the plant down and sent discharge notices to all who had worn C.I.O. buttons; when it reopened there was a tacit understanding that to be reinstated one had to join the A.F.L., with which the company had signed.³ We shall see later that a closed-shop agreement constitutes general discrimination under the Act if it is with a dominated or favored union, and that a company may not practice general discrimination at the close of a strike.

Burden of proof. In most cases only a few active unionists have been discriminated against, or only a few can produce evidence of discrimination. What is evidence? May every discharged person who is a union member claim to have been discriminated against? The company usually has an ostensible reason for the discharge. Can one tell whether the company's motive was antiunion? The answer would definitely be No if only direct evidence of anti-unionism were permitted. Some direct evidence is required. If there were none, the Board could not object to even the most capricious reasons for discharge. But where there is a suspicion of discrimination the company will be asked to substantiate its ostensible reason for discharge, which is usually "inefficiency." Thus a certain amount of the burden of proof is put on the company.⁴ Many union complaints about discriminatory practices are turned down by N.L.R.B. regional offices because they seem ill-founded or because supporting evidence is lacking.

Direct evidence of discrimination includes antiunion statements by employers or foremen at the time of the discharge, the coincidence of discharge right after the men discharged have attended a union meeting (2 N.L.R.B. 403, 411; *Id.*, 906, 914-5, and *Id.*, 963, 968) or have been elected to union office (2 N.L.R.B. 1, 8), and the fact that the per cent of the union men laid off in the company was larger than that of the nonunion men.

² 1 N.L.R.B. 454, 466. The Board's order was upheld by the Supreme Court in (1938) 303 U.S. 453.

³ The Board's order against the company was upheld by the federal circuit court in *N.L.R.B. v. National Motor Bearing Co.*, C.C.A.-2, June 2, 1939. (C.C.A.-2 stands for Circuit Court of Appeals for the Second District. These C.C.A. cases, reviewing Board orders, can be found in the Federal Reporter, abbreviated F. and F. [2d].)

⁴ The Wisconsin Supreme Court, interpreting the 1937 Wisconsin Labor Relations Act, said that the burden of proof was on the employee. *Blum Brothers Box Co. v. W.L.R.B.*, Wisconsin Supreme Court, Nov. 9, 1938, C.C.H., Par. 18,262. Without help from government boards many unions have set up, under collective agreements, the practice, that, if an employer found a man efficient enough to keep after a trial period, only a very serious fault could justify discharge. Sometimes impartial chairmen or boards hear complaints of unfair discharge under these agreements. Discrimination for union activity would be only one sort of unfair discharge. Various private boards have required different degrees of proof to back up complaints of this sort.

Indirect evidence includes such factors as length of the man's employment and his experience in the job, his efficiency according to the opinions of his fellow employees and foremen and according to the records of the company. Thus in one case a truck driver (who had just been elected union president) working for the Houston Cartage Company (which had discriminated against other employees) was fired for breaking company rules. The Board, however, noted that the company had had him trailed and that all drivers violate the letter of the rules at short intervals (2 N.L.R.B. 1000, 1004-5, cf. 781). The Board has also ruled against a bus company for firing a man allegedly for a minor accident, contrary to its own practices (2 N.L.R.B. 431, 443-5 and 448-50), and for discourtesy (2 N.L.R.B. 471, 482-3). A dry-goods wholesaler's charge of insolence was rejected since it referred to the action of four employees who advised the others not to submit to individual questioning (in an anti-union spirit) by the employer but to submit grievances through the union (2 N.L.R.B. 460, 467). An employee who was fired for talking to someone in another department was reinstated because the company could not prove that a rule against talking existed and because the Board felt that firing for such an offense would be incredibly drastic (13 N.L.R.B. No. 2).

A man who was promised a job that never materialized because of his union membership was awarded instatement and back pay (12 N.L.R.B. No. 119).

The courts have sometimes reversed the Board's decision. In one case they found that a meat packer had skill hard to replace but was so slack that the company finally fired him.⁵ In another they found there was no real evidence of antiunion motive, so that it was not necessary to consider evidence of inefficiency.⁶ In another they gave weight to the company's charge that to keep C.I.O. seamen would mean unsafe conditions on the ships.⁷

The Act also forbids discrimination as to a "term or condition of employment," for instance demotion. Occasionally there is a general policy of lower rates for unionists (1 N.L.R.B. 699, 710) but usually discrimination is felt especially by active union men, who may have been with the company too long to be fired. In demoting them the management hopes that they will resign but that, in any case, they will serve as a warning for the other employees.⁸ In the *Hardwick Stove Case* (2 N.L.R.B. 78, 85) the massing of

⁵ *Wilson and Company v. N.L.R.B.*, C.C.A.-8, April 12, 1939.

⁶ *Burlington Dyeing and Finishing Co. v. N.L.R.B.*, C.C.A.-4, June 13, 1939. The Board had thought it suspicious that the company failed to produce evidence of goods said to have been spoiled. The court noted that the company belatedly offered to produce it and that the Board refused to reopen the hearing.

⁷ *Peninsular and Occidental Steamship Co. v. N.L.R.B.*, C.C.A.-5, July 29, 1938. The Supreme Court refused to review the case.

⁸ C. Raushenbush, *Fordism*. League for Industrial Democracy. New York. 1937. P. 20 Cf. 14 N.L.R.B. No. 28.

company officials in front of union meeting halls persuaded the Board that the demotion of two skilled molders to menial jobs had an antiunion motive and effect.⁹

Back pay. Where the Board has found a violation, it has ordered the company to offer the man reinstatement to the same or an equivalent job. It usually orders the company to pay him, as damages, wages at his ordinary rate for the period of his absence. This "back pay" is specifically permitted by the Act (Section 10 [c]). If he has found temporary work elsewhere, his earnings there are subtracted from the company's debt.¹⁰ If he has found a regular job, the equivalent of his old one, he is no longer an "employee," as defined by the Act and is not entitled to reinstatement or to back pay. Such rules seem to put a premium on not finding a job, but since reinstatement is always long delayed and uncertain, they do not deter men from looking for new jobs.

If the Board's trial examiner finds for the company, and the Board later reverses him, no wages are due for the interval between the two decisions (1 N.L.R.B. 760, 767), on the theory that the company might well rely on the examiner's finding (whereas, before it, the company had been relying on its lawyer's advice). If several men are to be reinstated and the company does not have room immediately for all of them, the Board may order it to take them in order of seniority, since seniority is a "criterion of fitness" (1 N.L.R.B. 335, 348; 2 N.L.R.B. 20, 37). This puts "scabs" at the end of the hiring list. A Circuit Court has refused to find a company guilty of contempt for not reinstating men when it had no jobs available.¹¹

Indirect orders by the Board against discrimination (beside those mentioned in the second and third sections of this chapter) have commanded companies with yellow-dog contracts to inform each man that the contracts are void and to post notices renouncing its practices (1 N.L.R.B. 292, 306-7; 2 N.L.R.B. 248, 280-1), as does the revised Railway Labor Act. A company which moved its plant as an antiunion tactic was ordered to pay for moving unionists and their families to the new location if they wanted to go (2 N.L.R.B. 940, 949).

⁹ A Massachusetts court, interpreting the state law, held that reinstatement need not be to the original job as long as there was no discrimination. *Waldorf System v. N.L.R.B.* (1939) C.C.H., Par. 18,310.

¹⁰ Back pay is not due for those periods during which the plant has a shutdown for seasonal or other ordinary reasons, or because of a successful strike, unless the strike was a discriminatory lockout by the company. Back pay due includes bonuses the employee would have received, and payments in the form of board and room that he would have received. Though earnings are subtracted from back pay, these subtractions are not to include the expenses of finding the other job, or home relief, or unemployment benefits. N.L.R.B., *Third Annual Report*, pp. 201-3. In the second *Republic Steel* decision (1938) 9 N.L.R.B. 33, 219, the company was told to subtract work-relief earnings, but to pay them over to the government agency which had given the relief work.

¹¹ *N.L.R.B. v. Bell Oil and Gas Co.*, C.C.A.-5, July 29, 1938.

INTERFERENCES

SECTION 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SECTION 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of rights guaranteed in section 7.

This rather vague clause ¹² has been used chiefly to reinforce the antidiscrimination clause by preventing a number of employer activities which create fear of discrimination. These include propaganda and spying carried on in such a way that the employees know that the company is responsible.¹³

It has been used, secondly, to forbid antiunion actions which do not depend on psychological effect, for instance the secret use of spies leading to disguised discriminatory discharge, and the influencing of union action by bribing union officials (2 N.L.R.B. 248, 261) or by planting undercover men to incite violence leading to strong police retaliation (2 N.L.R.B. 626, 672 and *passim*).

Thirdly, the clause has been invoked against several extensions of discrimination. One is the black-listing of unionists with other firms. Threats to black-list have been condemned by the Board (2 N.L.R.B. 117, 121), including an employer's threat to a union secretary, who was also a law student at night school, to tell the Bar Association that he was a Communist and had engaged in union activities (2 N.L.R.B. 906, 913). Another extension is the threat of a company to evict strikers from a remote company town (2 N.L.R.B. 248, 265), as well as a threat to make stores stop extending credit to strikers (2 N.L.R.B. 125). All these threats are held to violate the general rule against interference.

During 1938-39, the Board reported, employers were found to have "interfered" by such diverse acts as the distribution of antiunion literature, ordering an employee to remove a union steward button, attempting to disrupt a union by arousing racial prejudice among its members, keeping employees overtime to prevent their attendance at a union meeting, delaying the appointment of a teacher because her husband had been active in the union, and refusing to renew a contract with an independent contractor because he had assisted a union.

¹² In *N.L.R.B. v. National Motor Bearing Co.*, C.C.A.-9, June 2, 1939, a dissenting judge urged that the Board's orders to companies forbid specific acts, rather than forbid "interference." The majority upheld the Board, relying on the Supreme Court's failure to object in the *Consolidated Edison Case* (1938, 305 U.S. 197) and the *Fansteel Case* (Feb. 27, 1939).

¹³ For instance, "rough shadowing," which was mentioned in Chapter 27 in connection with the Republic Steel and Harlan County situations.

Fear of discrimination. Where the employer is clearly the source of anti-union propaganda, this fact arouses fear of discrimination, and this fear is the chief reason for forbidding the propaganda. But it may instead be the "whispering" of "missionaries" aimed to divide the ranks of the unionists (2 N.L.R.B. 626, 683-4). In either case the attack on the union may include statements that the union leaders are radicals, implying either that this is bad in itself or that they will not guard the immediate interests of the members (1 N.L.R.B. 274, 276; 2 N.L.R.B. 802, 813-4). Companies have long denounced outsiders, "professional" labor leaders. The Board holds that this practice discriminates against outside unions (1 N.L.R.B. 915, 919; 2 N.L.R.B. 1081, 1090). The company may go to the length of stating that union leaders are racketeers who live off the workers' dues or that in any case the workers would never get any return from their dues (1 N.L.R.B. 292, 300; 2 N.L.R.B. 298, 306; 802, 813). An unusual way of doing this was seen when the Pacific Greyhound bus lines pointed out that the union—the Locomotive Firemen—had in the past opposed busses in order to favor railroad travel and might favor its railroad members in the future (2 N.L.R.B. 431 at 440). In such attacks unionists are labeled violent either directly (1 N.L.R.B. 503, 514) or by assurances to nonmembers that the company can protect them from the union (2 N.L.R.B. 1058, 1062-3). Another form of propaganda—allied to the antiunion propaganda which is implied in a refusal to recognize (1 N.L.R.B. 915, 924-5)—is the abrogation of a union contract, as in the case of the Brown Shoe Company. While the Board does not undertake to interpret or enforce collective contracts, it condemned the action of the Brown Company, which, without conferring with the union, announced that the union's seniority contract was at an end, just at the time when unionists needed its protection against discrimination in connection with the seasonal layoff (1 N.L.R.B. 803, 829). Alabama Mills similarly was condemned for refusing to negotiate for the return of strikers under the terms of a contract (2 N.L.R.B. 20, 33).

The Board has been charged with invading freedom of speech in condemning companies for even offering advice to unionists and, in one case, for circulating an antiunion speech by Representative Clare Hoffman of Michigan. Its defense is that the advice always partakes of the nature of propaganda and that, coming from the company, it contains the threat of discrimination. Advice is usually condemned when it is part of a larger antiunion program; a simple discussion of the N.L.R.A. was not condemned.¹⁴

A similar problem arises when a struck company threatens to close or to move. While this is sometimes a perfectly straightforward tip to the unionists that if labor costs go up it will pay the company to move, it is usually a bluff. Fraudulent threats to move, usually as part of a general antiunion

¹⁴ *Se-Ling Hosiery Mills Case, The New York Times, Aug. 14, 1939.*

campaign, have been mentioned in the Board's decision in several cases (1 N.L.R.B. 432, 446; 2 N.L.R.B. 626, 733); the time-honored practice of discouraging strikers by false signs of activity within a plant appeared in at least one case. In the same case (*Remington-Rand*) the company also secretly inspired the formation of citizens' organizations hostile to the union, and through them threatened to move.¹⁵

Espionage. Spying (or propaganda) serves to render it more probable that the motive in certain discharges was antiunion, and as a consequence the company is more likely to be found guilty of discrimination. But spying is also unlawful interference, whether for its objective help to the company or its subjective disturbance to the minds of employees.¹⁶

A sample case is that of Thompson Products, Inc., of Cleveland, and the United Automobile Workers. The company employment manager testified that they had not employed any detective agency and the court rejected the Board's order on the ground that there was no evidence that the company had sent any one to union meetings or knew who belonged. The La Follette Committee later found that the company had employed four agencies. Later Board testimony showed that the company formed its own undercover squad among the force, to run out sit-downers if a sit-down took place, to mingle with the men at lunch time and report the names of any talking union, to talk in favor of the inside union and against the C.I.O., and to spread the rumor that the company would move if there were a strike. The squad was told how to break up union meetings. Two were to throw stink bombs and others to jibe at speakers. One of them was to pick a fight with a unionist in the plant, so that the company would have reason to fire them both.¹⁷

FAVORED UNIONS

SECTION 8. It shall be an unfair labor practice for an employer . . .

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board . . . an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

This clause forbids both domination of a company union and favoritism to any union, whether dependent or nondependent. Either domination or fa-

¹⁵ The Board was upheld, *Remington-Rand, Inc. v. N.L.R.B.*, C.C.A.-2. The Supreme Court refused to review the decision. Several courts have banned company propaganda, but it was upheld in *N.L.R.B. v. Union Pacific Stages* (C.C.A.-9, 1938) 99 F.(2d) 153 at 178.

¹⁶ Open observation by company officials in front of union meeting places, calculated to frighten prospective members, has been taken as evidence of an antiunion attitude (2 N.L.R.B. 78, 85, 298, 305; 919, 921-22; 963, 965). Secretive spying has been condemned by the Supreme Court in many cases.

¹⁷ N.L.R.B. release, June 28, 1939. The La Follette Committee in 1939 introduced a bill against spying.

voritism hinders free choice by employees. Knowing that the company prefers one, they will fear to join another, even if there is not actually a closed-shop arrangement. If the evidence of this fear were clear, the discrimination clause would cover the situation. Where it is not clear, the present clause may cover it, if the company does not hide its relation to the union.

This clause also forbids certain antiunion aspects of domination and favoritism other than those that create a fear of discrimination. Financial help or other aids from the company will put one union ahead in its competition with the other. Moreover, company unions are antiunion in the sense that they give employees a deceptive impression that they are getting all they can from collective bargaining, without belonging to a nondependent union. This is usually untrue. It may be untrue also where the company favors one outside union over another, for (aside from the question whether one of the competing national unions is usually more militant) where a company favors a union the result may be that that union is not free to make demands on the company.

Domination. Since 1933 companies have been setting up company unions in the hope that they would be accepted as bargaining agents by labor boards. Employee-representation plans organized before 1933 have been revamped to look more like independent organizations.¹⁸ A part of an attempt to unite the company unions within a given industry was the formation of a national federation of so-called independent unions in 1937. The Act does not forbid the existence of unions confined to one company or of new unions not connected with the C.I.O. or A.F.L.; they have as much right as another organization to represent employees.

It is wrong for a company to initiate a company union, either openly or secretly; this is true even if it is not literally confined to one company but recruits members in several related companies which dominate it (2 N.L.R.B. 781, 791). An unsuccessful attempt to initiate one is also an unfair labor practice (1 N.L.R.B. 519, 526). In the *Lion and Ansin Shoe Cases* (1 N.L.R.B. 929, 932 and 935; 2 N.L.R.B. 819, 825 and 832) the company was only in the background, since in each case the threat of the company to move its plant alarmed enough employees to lead to the formation of a company union, ostensibly without company help. In the second case an intermediary in the formation of the union was a citizens' committee. A special form of company union is the back-to-work organization, formed during a strike.¹⁹

¹⁸ D. Saposs and E. Bliss, *Anti-Labor Activities in the United States*, League for Industrial Democracy, New York, 1938, pp. 9-17. Advice on how to set up an independent union was given in National Association of Manufacturers, "Independent Unions," *N.A.M. Labor Relations Bulletin* (July 23, 1937), No. 23, pp. 3, 16-27. A court interpreting the New York labor relations law held that a company did not dominate when it paid a union to take over its welfare plan. *Lee v. Curtis-Wright Corp.* (1938) C.C.H. Par. 18,217.

¹⁹ Saposs and Bliss, *op. cit.*, pp. 18-25.

The city council and other public officials may be intermediaries in forming it and may reshape the law to meet the situation (2 N.L.R.B. 125, 130; 626, 646, 652, and 654).

Even if the company did not initiate the organization, it is not allowed to dominate it. The law does permit the company to contribute the time of conferees on both sides, though to be sure some opinions by the Board list contributions of employee time as evidence of domination (2 N.L.R.B. 310, 338-9 and 350; 431, 453). Another evidence of domination, accepted in the *Pacific Greyhound Case* (2 N.L.R.B. 431, 452), was the fact that the company checked off dues for the organization, an action falling just short of contributing to it.²⁰

Favoritism. Company unions, in their competition with outside unions, usually have the advantage of company favor. Company executives frequently urge employees to join and we have noted that the effectiveness of this urging rests on the degree of the discrimination the company is likely to exercise. In the *Lukens Steel Case* (2 N.L.R.B. 1009, 1013), the Board ordered the company to inform all supervisory employees to cease this solicitation (cf. 1 N.L.R.B. 292, 306). Needless to say, the company union will be favored in bargaining relations, too, in order to create the impression that it can get more for the men than can another union. The Board has ordered companies to post notices contradicting a company union's allegation that it had a closed-shop agreement (1 N.L.R.B. 316, 327); also to give both unions equal right to the hall (2 N.L.R.B. 1081, 1093) and the bulletin boards (2 N.L.R.B. 125, 146), and equal permission to recruit members during working hours (1 N.L.R.B. 97, 121).

In the period October, 1935, through December, 1938, charges of domination of unaffiliated unions were dismissed or withdrawn informally in 653 cases. Of the remaining 200 closed during that period, in 60 the companies involved agreed to a decree ordering them to cease domination, in 126 the Board found a violation, and in 14 it found none.²¹

Disestablishment. The Board has ordered companies to cease recognizing dominated unions. But it has often seemed to the Board that to continue the company union at all would involve continuing the already established position of favor:

²⁰ An agreement to check off dues for an outside union shows that the union is strong enough to have won this concession from the company. It is strong enough not really to need the checkoff as a means of holding its membership together. Checking off for both unions alike is not a violation of the Act, nor is checking off for only one union in cases in which the Act permits the closed shop. The Railway Labor Act forbids the closed shop and forbids a company to check off dues for either a dependent or a nondependent union. Before that Act some railroad unions were too weak to demand the checkoff while others were too strong to need it.

²¹ N.L.R.B. mimeographed publication R-1672, supplement, April 18, 1939, p. 9.

Even though he would not have freely chosen the council as an initial proposition, the employee, once having chosen, may by force of timorous habit, be held firmly to his choice. (1 N.L.R.B. 699, 710.)

The Supreme Court in the *Texas Case* in 1930 upheld a lower court's order that the railway disestablish the company union. It was assumed that the company was able to do so. The Board issues similar orders on similar assumptions. In ordering disestablishment it may specifically tell the company to inform the company union in writing that it exists in violation of the Act (1 N.L.R.B. 292, 307) or to post notices that the company union is disestablished (1 N.L.R.B. 316, 334) or to attempt to cancel the charter of the company union (2 N.L.R.B. 1009, 1013); but in general an order to disestablish is equivalent to those other Board orders which require permanent withdrawal of recognition, as in the case quoted just above. Some courts are inclined to restrict their orders to "withdrawal" instead of "disestablishment."²² If a nondependent union asks for an election, a company union's request to be put on the ballot will be refused—if the Board has found the organization to be dominated.

The Supreme Court has upheld the Board in ordering companies to withdraw recognition from dominated unions and exclude them as bargaining agents.²³ The circuit courts have upheld it in cases in which they found clear evidence of domination,²⁴ especially where it created bitterness.²⁵ In others a court found that the company union had been altered to eliminate company influence, that the employees wanted it, and that it had fostered peaceful bargaining;²⁶ that a union was not dominated when foremen permitted it to solicit members during working hours, if its rival is not clearly discriminated against and makes no immediate protest.²⁷

Collusive contracts. In many cases, favored unions have even been given closed-shop contracts. These cases would be merely aggravated examples of company domination²⁸ if it were not that in some of them the union said to be unduly favored has been a nondependent A.F.L. union. The prototype is the *National Electric Products Case*. Here the company signed with the A.F.L. in order to keep out the C.I.O. It counted on the sanctity of contracts

²² *Cudahy Case*, C.C.A.-8, March 27, 1939; *Hamilton-Brown Case*, C.C.A.-8, May 29, 1939.

²³ *N.L.R.B. v. Pacific Greyhound Lines* and *N.L.R.B. v. Pennsylvania Greyhound Lines* (1938) 303 U.S. 272 and 261.

²⁴ *Wilson and Co. v. N.L.R.B.*, C.C.A.-8, April 12, 1939.

²⁵ *N.L.R.B. v. Stackpole Carbon Co.*, C.C.A.-3, May 12, 1939.

²⁶ *Newport News Shipbuilding Case*, C.C.A.-4, February 28, 1939.

²⁷ *Ballston-Stillwater Knitting Co. v. N.L.R.B.*, C.C.A.-2, August 1, 1938.

²⁸ The Board set aside sixty-two closed-shop agreements with company unions between 1935 and March 1, 1939, about twice as many on complaint of the C.I.O. as of the A.F.L. The prototype is *Clinton Cotton Mills Case*, 1 N.L.R.B. 97. See also several cases referred to just below: *Remington-Rand*, *National Licorice*, *Hamilton-Brown*, and *Fansteel*.

to help it against the Board if the latter decided that there should be an election to choose the bargaining agent. To make sure of this sanctity, the A.F.L. union got a federal court order requiring the company to live up to its agreement. It was a "friendly suit"; the judge was not told about the origin of the contract. When the Board heard the case later and disregarded the agreement, it was assailed as flouting the courts.

Cases of this sort have come to the Board as a consequence of the A.F.L.-C.I.O. split, and it has decided fourteen of them in the two-year period which ended March 1, 1939. In each case the Board set aside the company's agreement with the favored union which had followed pressure by the company to have employees join that union. In every case pressure from the employer included discrimination and threatened discrimination. In several it included refusal to bargain with the majority union as the law required, with the result that large numbers of the members of the majority union were discouraged and joined the favored union. Typically the company favored that union by contributing money, services, meeting places, and materials, and often enabled it to step into the shoes of a company union.

The contract given to the preferred union—which in about half the fourteen cases was awarded without even waiting for the majority membership which usually followed favoritism or pressure—was the culminating act of favoritism. Even if the contracts signed had not been closed-shop contracts they would have increased the union's prestige and appearance of success and so increased the employees' incentive to join it. The men realized that bargaining through the other union could be achieved only by troublesome conflict. But in all these cases, it *was* a closed-shop contract, which automatically got rid of persons who were totally opposed to the favored union.

The fourteen employers apparently thought that the A.F.L. was more reasonable than the C.I.O.²⁹ An additional motive may be discerned in the three cases in the electrical-equipment manufacturing industry, for the A.F.L. threatened to have non-A.F.L. goods boycotted by installation electricians.³⁰ This threat would have affected the decision of both the company and its employees. Similarly, in the case involving a lumber company, the fact that lumber boycotts accompanied the A.F.L.-C.I.O. split may have contributed.³¹ There was also one case in which the Board set aside an agreement with the C.I.O.; the company had presumably preferred to overlook the probable

²⁹ In one case the A.F.L. was preferred to the Brotherhood of Railroad Trainmen. *Missouri-Arkansas Coach Lines*, 7 N.L.R.B. 186.

³⁰ *National Electric Products Case*, 3 N.L.R.B. 475; *Electric Vacuum Cleaner Case*, 8 N.L.R.B. 112; *Jefferson Electric Case*, 8 N.L.R.B. 284 (reversed, C.C.A.-7, March 31, 1939. The company was not proved to have favored the A.F.L.).

³¹ *Connor Lumber Case*, 10 N.L.R.B. No. 74. See also the *M and M Wood Working Case*, below. Of the fourteen cases, nine have not yet been cited: *Lenox Shoe*, 4 N.L.R.B. 372; *National Motor Bearing*, 5 N.L.R.B. 409 (upheld, see below); *Zenite Metal*, 5 N.L.R.B. 509; *Hunkeler*, 7 N.L.R.B. 1276; *Ward Baking*, 8 N.L.R.B. 558; *Serrick*, 8 N.L.R.B. 621; *Cowell Portland Cement*, 8 N.L.R.B. 1020; *National Tea*, 9 N.L.R.B. 161; *Mt. Vernon Car Mfg.*, 11 N.L.R.B. 500.

majority in favor of the A.F.L. because the United Mine Workers dominated the coal industry.³²

The Board set aside these collusive contracts. In a similar case the Wisconsin Board professed itself helpless to right what it admitted was a wrong. Under the Wisconsin law it could set aside an agreement if it was made with a company union, but it had to accept it if made with an A.F.L. union. It could not even hold an election to see whether the C.I.O. members who had joined the A.F.L. secretly nurtured an attachment to the C.I.O.³³

Remedy for Collusion. In contrast, in the *National Electric Products Case* the N.L.R.B. felt free to set aside the agreement and proceed to an election to see whether loyalty to the C.I.O. had been stifled by favoritism. The A.F.L. won. Although persons discharged as a result of the wrongful closed-shop contracts can be reinstated, it is impossible to wipe the slate clean, to return to the *status quo* and hold an election as if favoritism had never occurred. In these cases the Board is inclined to let some time elapse before an election, in order to let the favoritism, now forbidden, wear off as much as possible.

In cases in which a definite majority originally supported the nonfavored union, the Board is inclined to order the company to bargain with that union. It speaks of this as restoring the *status quo* as nearly as possible and for this position has the support of at least one circuit court.³⁴ But in other, similar cases judges have shown an inclination to require the offended majority union to prove its claim by the holding of an election, since litigation has taken time and time may have altered workers' preferences. In one case, in which the favored union was a company union, the court pointed to the tentative nature of the outside union's organization in the plant as the reason for requiring an election to substantiate its claim to the majority.³⁵ In another, the favored union was again a company union and the C.I.O. claimed to be the bargaining agent. But during the N.L.R.B. hearings the A.F.L. obtained (apparently) a majority, and the court held that it was better to hold an election between the C.I.O. and the A.F.L. than to restore the

³² *Mine "B" Coal Case*, 8 N.L.R.B. 1155. Much depends on whether a "majority" is looked for in one plant or in a whole industry.

³³ *Freeman Shoe Case*, decided Oct. 23, 1937; upheld by the Circuit Court of Dane County, Wisconsin.

³⁴ *National Motor Bearing Case*, C.C.A.-9, June 2, 1939. In one case the company preferred a company union over an A.F.L. union which had a majority for about a year. The court upheld the Board's order that the company bargain with the A.F.L. union, though it said the company should be allowed to offer evidence that the A.F.L. no longer had a majority. *Remington-Rand Case*, 94 F.(2d) 862. On August 7, 1939, the company asked the Board for an election in its chief plants.

In the *Windsor Case* (1940) 20 N.L.R.B. No. 31, the Board found that the company, which moved machinery South and threatened to move more, did so out of hostility to the union. Though there was some testimony that the company's action had caused the union to lose the majority which it had had in 1938, the Board ordered the company to bargain with the union.

³⁵ *N.L.R.B. v. National Licorice Co.*, C.C.A.-2, 1939.

status quo.³⁶ In a case before the Supreme Court the Court agreed with the Board that the union (C.I.O.) had had a valid claim to recognition as the majority union, but, since it held, contrary to the Board, that the company ought not to be compelled to reinstate members of the union who took part in a sit-down and who would not later renounce their union, it ruled that the union no longer had a clear claim. Though it agreed with the Board that the company should withdraw recognition from the company union which was later formed, it felt that the proper course was an election between the C.I.O. and the company union.³⁷

A case similar to those just referred to is one in which the company did not agree on a closed shop with the favored union: the *Consolidated Edison Case*, which is often taken to mean that the Supreme Court is opposed to setting aside contracts with favored unions. After the Supreme Court held the N.L.R.A. constitutional, the utility company, which is located in New York City, informed the officers of its company union that it intended to recognize the Electrical Workers of the A.F.L. It did recognize them, at a time when they had few members and when a small local, recently affiliated with the C.I.O., was the only active union. Seven units of the company union became locals of the A.F.L. union and the company made contracts with them; most of the company-union officers became local officers and organized for the A.F.L. at company expense and on company property, while the C.I.O. was not given the same privileges; moreover, foremen forced many workers to join the union.

The Board ordered the contract set aside, since it looked on it as a leading factor in the creation of illegitimate prestige for the favored union. The Board, however, failed to present details about the favoritism. The Supreme Court therefore remained unconvinced and upheld the contract, though it supported the Board's charges of discrimination.³⁸

Another situation in which favoritism and contracts posed a legal problem arose in two woodworking cases. In each case the company signed agreements with A.F.L. locals which had the support of an uncoerced majority. However, most of the members decided to transfer to the C.I.O. The companies, either because they preferred the A.F.L. or feared its boycott,

³⁶ *Hamilton-Brown Shoe Case*, C.C.A.-8, May 29, 1939.

³⁷ *Fansteel Case* (1939) 306 U.S. 240.

³⁸ *Consolidated Edison Case* (1938) 305 U.S. 197.

A majority of the Edison employees joined the A.F.L. union, but the union did not claim exclusive bargaining rights; the contract applied only to union members. The Court's language suggests that a company may bargain with a minority union if no recognized majority exists, but the point is not clear. Such bargaining smacks of favoritism.

The Court said that the Edison contract could not be upset without making the A.F.L. union a party to the legal proceedings, and the Board therefore changed its procedure after that. But in a later case the Court apparently changed its mind. *National Licorice Co. v. N.L.R.B.*, March 4, 1940.

The Edison employees formed an independent union and an election was scheduled for April, 1940.

discharged the C.I.O. members under the A.F.L. closed-shop agreement and replaced them with A.F.L. people. That is, it favored the minority union. It did so because of the influence of the A.F.L. throughout the industry and its power to boycott, rather than because it considered itself bound to the A.F.L. Carpenters by contract.

The C.I.O. went to the Board, which ruled that its members should be reinstated. However, in one of the cases the Circuit Court ruled that the A.F.L. local still existed and its contract was valid. If the closed shop had not been involved, the problem would have been one degree less acute for the participants: the company would have been bound not to fire members of either union for their membership.³⁹

Where a union cannot invoke a closed-shop agreement against the reinstatement of members of its rival, it may be able to invoke simply a boycott or strike threat. This fact was pleaded by a company which feared to reinstate two C.I.O. men as ordered. The Circuit Court said that if A.F.L. Teamsters interfered, they would go to jail for contempt.⁴⁰

STRIKERS' REINSTATEMENT

A special case of discrimination is a company's refusal to rehire unionists after an unsuccessful strike. In some cases the company's wrong-doing is aggravated by its previous refusal to bargain with the union, a refusal which may have caused the strike. In some cases the company gives strike violence as a reason for its refusal to rehire.

A striker in an ordinary strike has a claim to be reinstated because under Section 2(3) he is an "employee" as long as the dispute is "current." If the strike is successful, the unionists will be taken back anyway. If it is not, operations return to normal, the strike is no longer current,⁴¹ but the em-

³⁹ *M and M Wood Working Case*, 6 N.L.R.B. 372, overruled C.C.A.-9, February 17, 1939. The other wood case was that of *Smith Wood Products Co.*, 7 N.L.R.B. 950. The immediate question in these cases is whether the reinstatement of the seceders is to be prevented by recognizing the continued existence of a closed-shop contract with the old union. The interest of the old (national) union in the contract, because its members have more chances at jobs if the seceders are barred, is emphasized in a similar case under the Pennsylvania Labor Relations Act of 1937; *P.L.R.B. v. Red Star Shoe Repairing Co.*, Court of Common Pleas, May 3, 1938, C.C.H., Par. 18,216. But if the agreement is only for a preferential shop, the seceders can still claim their jobs, according to the N.L.R.B. in the *South Atlantic Steamship Case* (1939) 12 N.L.R.B. No. 133. A corollary of the court decisions seems to be that a seceding local (a fortiori a majority which seceded as individuals) cannot "take over" an existing contract (closed-shop or other). The question of holding a new election (despite existing contracts) when members shift their allegiance is discussed later.

The Supreme Court ordered reinstatement for seamen belonging to the N.M.U. (C.I.O.) where the I.S.U. (A.F.L.) had only a preferential-shop agreement. *N.L.R.B. v. Waterman Steamship Co.*, February 12, 1940.

⁴⁰ *Eavenson Case* (C.C.A. 1939) 4 Labor Relations Reporter 544.

⁴¹ *N.L.R.B. v. Columbian Co.* (1939) 306 U.S. 292, majority opinion, par. 7. S. 1264 (76th Congress, 1st session) tried to write this definition into the Act; the Board objected that, if the union continued to carry on the strike, even though unsuccessful, it was still a current strike. N.L.R.B., *Report to Senate Committee*, April 1939, p. 196.

ployees at this point may still ask to get their jobs back. If some of them are refused under circumstances that point to an antiunion motive, the Board has ordered the company to

reinstate employees to their former positions, dismissing if necessary all those hired since the date of the strike or walkout; place all those for whom positions were not immediately available on a preferential seniority list; and make whole such of the employees who [*sic*] receive employment by payment of back pay from the date of their refusal to reinstate to the date of the offer of reinstatement.⁴²

Reinstatement has been upheld by the Supreme Court. It was upheld even though the strike leaders in question neglected to apply to the company. This failure was excused by the fact that the company had let it be understood that it was useless for these particular people to apply.⁴³ The Court's ruling fits with Section 2 of the Act, which says not only that a worker is still an employee if his work has ceased because of a current dispute, but also that he is an employee if his work has ceased because of an unfair labor practice. Interpreting this clause, the Board has ruled that, if a strike is caused by an unfair practice, the strikers continue to be employees even when the strike is over, and need not themselves apply for reinstatement. It is up to the company to call them in for work, and back-pay claims accrue if it fails to do so (1 N.L.R.B. 950, 960; 2 N.L.R.B. 626, 737). A worker's claim expires if he obtains "any other regular and substantially equivalent employment" (Sec. 2) or if he refuses reinstatement because the company's terms are unsatisfactory (1 N.L.R.B. 837, 843).

Back pay is due in general from the time of the unfair practice. In a case in which the company locked out its force and opened up later with a contract with another union, the Circuit Court held that the purpose of the lockout was to break the first union and that back pay was due from the day of the lockout.⁴⁴ The Board has applied the same rule to cases in which men struck in order to stop unfair practices—the discharge of fellow unionists (1 N.L.R.B. 519, 527-528; 2 N.L.R.B. 248, 276) or the refusal to bargain with a union even though it had a majority (*Fansteel, Sands, and Columbian Cases*, below). That is, back pay is due from the first day of such a strike or that day in the middle of an ordinary strike on which the company refused to bargain. These unfair practices committed before the discriminatory windup of the strike not only lengthen the period of back pay but also are taken by the Board as making it more probable that the company had anti-union motives at the time of its settlement.

Failure to reinstate a large proportion of a striking force—especially re-

⁴² N.L.R.B., *Second Annual Report*, 1936-37, p. 153. Cf. pp. 76-78.

⁴³ N.L.R.B. v. *Mackay Co.* (1938) 304 U.S. 333.

⁴⁴ N.L.R.B. v. *National Motor Bearing Co.*, C.C.A.-9, June 2, 1939.

fusal over a long period—will pile up large claims (2 N.L.R.B. 626, 737; 9 N.L.R.B. 33) which the company will seek to evade. It may, for instance, plead that the strikers refused its offer to settle and are therefore no longer employees. In reply the Board has ruled that the union is not bound to accept anything the company will offer (1 N.L.R.B. 664, 673; 2 N.L.R.B. 952, 958-59) unless operations are back to normal and the strike is over.

Unclean hands. Another plea offered by companies is that the strike was in violation of a collective agreement. Presumably any "illegal strike" (Chapter 28) could be used in this way to throw the union's case out of court by showing that it came into court with "unclean hands." It might even be argued that a strike against an unfair practice is "unclean" because it is unnecessary as long as there is a Board to hear complaints.

A more usual plea is that during the strike violence was used by the unionists discriminated against. The Board has said that it is usually clear that the company has no objection to hiring "violent" men, but is really discriminating in order to injure the union. The company will take back some men who have been violent—on either side of the fight—but will reject others. However, the Board was willing to compromise. Though it would not burden itself with investigating strike conduct, yet if a man had been convicted of violence which was more than incidental scrapping—if he was convicted of a felony—it would not order him reinstated. In general this position has been approved by the courts, but they sometimes disagree with the Board as to what constitutes a serious offense.

The Board argued that this rule was not an incentive to strikers to commit misdemeanors, since during a strike reinstatement-problems are not in strikers' minds. Critics of the Board pictured red-handed strikers being practically paid for their misdeeds. Its supporters pictured the critics as assisting a red-handed company to escape through a technicality. Both seemed to expect the Board and the courts to balance the misdeeds of the two sides in arriving at any decision, though the strongest point of the Board was that it was not necessary to balance, since the strikers' behavior is up to the police.

In 1937 there was perhaps some notion in unionists' minds that sit-downs were not unlawful violence. In balancing the misdeeds of the two sides in the *Fansteel Case* (where the company pleaded that it should not have to reinstate any sit-downers whom it did not want to rehire), a dissenting circuit judge remarked that though the unionists had misjudged the law, their error was obviously no greater than that of the company, which had precipitated the strike by refusing to bargain with the majority union, in violation of the Act.⁴⁵ However, the majority upheld the company, and so

⁴⁵ *N.L.R.B. v. Fansteel Metallurgical Corp.* (1938) 98 F.(2d) 375.

did the Supreme Court, on February 27, 1939, when it decided three cases (Fansteel, Sands, and Columbian) largely against the Board, at a time when the Board was already the subject of many attacks. Except for a partial reversal in the *Consolidated Edison Case*, these were the Board's first adverse decisions in the Supreme Court.

In *N.L.R.B. v. Fansteel Metallurgical Corporation*⁴⁶ the Supreme Court declared that sit-downs were unlawful⁴⁷ and that sit-downers could not claim the benefits of the Act. Their disability seemed, at first, to turn on the fact that the company had announced to them, when they refused to abandon their sit-down, that they were fired; but, since some employees who aided the sit-down were also refused reinstatement by the Court, though not included in that announcement by the company, the decision apparently means that all strikers acquire unclean hands if they act unlawfully to the degree that sit-downers do.

What is that degree of unlawfulness which will forfeit rights under the Act? It need not be a criminal act, for in the *Sands Case* the Court spoke of the Fansteel sit-down as a civil rather than as a criminal offense. The union's unlawfulness need not be more wicked than violating a collective agreement, for that was the obstacle in the *Sands Case*.⁴⁸

In these cases the courts were balancing against each other the workers' offense of violence and the companies' offense of refusing to bargain. The latter was a violation of a duty set up by the Act and discussed in the section immediately below. This duty was also at issue in the third case.

The third case in the group is *N.L.R.B. v. Columbian Enameling and*

⁴⁶ (1939) 306 U.S. 240.

⁴⁷ The Court noted that the Illinois courts had enjoined the Fansteel sit-down. On the same day it refused to review that injunction case.

⁴⁸ *N.L.R.B. v. Sands Mfg. Co.* (1939) 306 U.S. 332. The company did not tell the men they were fired, but the Court took the union's breach of contract to mean that the men "severed their relation with the company." It is hard to see how there was a breach, since the agreement contained a clause permitting strikes. *Ibid.*, par. 4. On the other hand, there seems to have been little evidence that the company preferred the A.F.L., to which it later turned. In sum, the strike seems to have been just a strike over seniority rules. Until it was ended the men (despite the Supreme Court) should have had a claim to reinstatement. The company had a chance to end the claim by getting a new force through an arrangement with the A.F.L. Apparently (unless the strikers had "severed their relation") it was the company's duty to offer to take them back under the terms which the company and the A.F.L. had found acceptable. If it notified them and they did not choose to return, and the company was able to operate fully without them, their claims would expire. If half or more of them chose to accept, the company would be in a dilemma, if the A.F.L. would not send its men in without an A.F.L. closed-shop arrangement. If fewer than half chose to accept, the A.F.L. would have a majority and the company could make a legal closed-shop agreement with the A.F.L. and proceed to fire these old men (unless they joined the A.F.L.).

The Board did not give up its general procedure after these decisions of the Court; it continued to order the reinstatement of strikers guilty of petty violence only, and two circuit courts supported this position in the *Stackpole and Kiddie Kover Cases* (1939) 105 F.(2d) 167 at 175 and 179 F.(2d) at 183. The Supreme Court refused to review the former. See also *N.L.R.B., Fourth Annual Report, 1938-39*, pp. 105-7. The C.C.A.-3 refused to reinstate forty men convicted of lesser crimes. *Republic Steel Case*, November 8, 1939.

*Stamping Co.*⁴⁹ The Court held that a mediator's business is to mediate, which is not the same as negotiating on behalf of the union, and that therefore a talk between government mediators and company officials in the middle of a strike was not a request by the union that the company bargain with it. This holding of the Court is very far removed from reality, and, together with the other two cases, suggests that the Court was responding to the change in public sentiment. In each of the three cases Justices Black and Reed dissented.

THE DUTY TO BARGAIN

We may now turn to the second main function of the Board—that of requiring companies to make reasonable efforts to arrive at collective agreements. Closely related to this function is the determination of what organization represents the majority of the employees. Section 8 makes it an unfair labor practice for an employer

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9(a).

Section 9(a) provides that the organization chosen by the majority is to be the exclusive representative of all the employees (though any group may present grievances). That is, only a majority union may complain to the Board of a company's refusal to bargain with it, and only a majority union may make a closed-shop agreement, as we have seen. A contract with a minority union is "unfair" if there is a majority union.⁵⁰

If it is not clear whether a certain union has the allegiance of a majority, the Board is to hold a secret election, but before doing so it is to decide whether an employer, plant, or craft, or a subdivision of one of these, is the proper bargaining unit or area. A trade-union having a majority, however, need not wait for a certificate from the Board either to try to bargain or if necessary to register a complaint with the Board that a company will not bargain or will not grant it exclusive status.⁵¹

Exclusive agency. There has been complaint to the effect that the "exclusive bargaining" rule is monopolistic. It does give the majority union a prestige advantage and probably leads in the direction of the closed shop. But it does not automatically establish the closed shop; that depends on the

⁴⁹ (1939) 306 U.S. 292.

⁵⁰ A minority union is free to seek a bargain if there is no majority union, but the company is also free to refuse. *N.L.R.B. v. Stackpole Carbon Co.* (1939) 105 F.(2d) 167. See also note 38, above.

⁵¹ The C.C.A.-6 on March 13, 1939, held against a company which claimed ignorance that the union had, or said it had, a majority. *N.L.R.B. v. The Louisville Refining Co.*

bargaining situation. The "exclusive" rule is based on the observation, as former Board Chairman Garrison stated, that separate minority representation, for which employers often plead, is used by them for obstructing collective bargaining. It is also based on the fact that nonunion men in a union shop customarily work under the terms of the collective agreement.

One form of minority or multiple or proportional representation was accepted by the A.F.L. for the automobile industry in 1934 as a compromise. The Automobile Labor Board, appointed at that time, held departmental elections in each plant. Candidates might state that they stood for a certain union or company union, if they liked. The notion was that in a big plant the representatives who were members of different organizations or of no organization would be about proportional to the employees so situated; if not, the proportion was to be roughly made up by adding representatives at large from among the runners-up. This plan contrasts with the N.L.R.B. rule that the workers themselves should choose among alternative forms of labor organization; the A.L.B. was creating a semipublic unionism.⁵² It is interesting that two employers which have used "proportional representation" in recent years have been governmental: the T.V.A. and the New York City municipal subway. The Transport Workers Union pleaded that this subway should not be exempt from exclusive bargaining under the state Labor Relations Act any more than the privately operated subways, but the state Board pointed to the state law, which exempted governmental agencies, as does the federal law. It has been argued that if proportional representation is good for a legislature, it is good for a bargaining committee. On the other side it is said that the function of a union is more executive than legislative; that, unlike competing unions in a plant, the various parties in a legislature fundamentally want to co-operate; and that, after a legislature or union has voted, administration of their decision calls for a united will.⁵³

With the voiding of the N.R.A., the auto plan vanished. Two years later, when the United Automobile Workers had gained the strength to win a strike from General Motors, the resulting agreement stipulated that the union was to represent only its members (though the company in 1937 and again in 1939 gave some assurance that it would not bargain with any other organization). In the steel settlements of 1937, and in others, unions have accepted bargaining for their members only, usually when they were not certain of a majority in an election. If the N.L.R.A. did not provide for exclusive bargaining, but only for bargaining on behalf of the union's members, it would not be necessary to hold elections.

⁵² L. Lorwin and A. Wubnig, *Labor Relations Boards*. Brookings Institution. Washington, D. C. 1935. Pp. 378-9.

⁵³ P. A. Douglas, "American Labor Relations Boards," *American Economic Review* (December, 1937), Vol. 27, No. 4, p. 742.

Refusal to bargain. All antiunion conduct described so far is, in effect, a refusal to bargain collectively. But what is condemned under Section 8(5) is the refusal to meet union representatives or the failure to exert reasonable efforts to reach an agreement with them. If there is no evidence to indicate that these efforts have not been made, failure to reach an agreement cannot be condemned.

The Board has held that, when charged with refusing to meet unionists, a company may plead that the union has never officially approached it,⁵⁴ but it may not plead that the representatives were outsiders and not employees (1 N.L.R.B. 915, 922, interpreting Section 8 [1]); or that the union officials dominate the members (2 N.L.R.B. 125, 142) or make promises that they will be unable to keep (1 N.L.R.B. 470, 477); or that the union has not subjected the company's competitors to collective bargaining (1 N.L.R.B. 349, 355; 13 N.L.R.B. No. 2) or makes demands which, the company says, amount to an attempt to seize control of the company (2 N.L.R.B. 57, 75); or that all individual grievances have been adjusted (1 N.L.R.B. 359, 368; cf. *Id.*, 489, 497).

The employees' right to be bargained with continues when they are out on strike (1 N.L.R.B. 181, 197; 2 N.L.R.B. 57, 72), though, as at other times, the employer may withdraw if "further negotiations would be fruitless."⁵⁵ In the *Birge Case* (1 N.L.R.B. 731, 745) the Board held that if the company had met and negotiated in good faith during the strike, "a solution of the difficulty might have been evolved." Moreover, failure to meet was not in accord with the traditions of the company and of the industry. The Board ordered the reinstatement of strikers even if the men hired to replace them had to be discharged. Chairman Madden dissented because he interpreted the order to mean that any employer must close his plant during a strike, even in cases where the strike was not caused by his refusal to bargain.

In the *Remington-Rand* case (2 N.L.R.B. 626, 737) the Board held that

. . . by its illegal refusal to bargain collectively, the respondent caused and perpetuated a strike, and consequently any activities on its part designed to end that strike by defeating it, in contrast to settling it by the method of collective bargaining, are in violation of section 8, subdivision (1).

Whether the strike is caused by a refusal to bargain or by a disagreement over wages, the strikers' claim to be bargained with can be erased by their use of violence.

The company is required to bargain in good faith, to make every reasonable effort to reach a settlement. Clearly it is hard to determine good faith.

⁵⁴ N.L.R.B., *Second Annual Report*, 1936-7, p. 80. See *Columbian Case*, above.

⁵⁵ N.L.R.B., *Second Annual Report*, 1936-7, p. 89. See *Sands Case*, above.

In the *St. Joseph Stock Yards Case* (2 N.L.R.B. 39, 49) the Board found that the company's "whole attitude is colored with the belief that the agreement or concession comes as a matter of grace on its part." It is expected to do more than reject union proposals—it is to submit counterproposals or enter into a sincere discussion of them. The company should not delay discussion until it revives its company union (2 N.L.R.B. 835, 852). It is not to misrepresent the conditions being bargained about (1 N.L.R.B. 731, 744), or to argue that competition requires low labor costs without showing how higher wage rates would raise its prices (2 N.L.R.B. 1, 17), or to plead poverty without proving the claim or allowing it to be checked (1 N.L.R.B. 857, 842; 12 N.L.R.B. No. 119). It is wrong for a company to refuse to meet the union because the latter will not first agree to yield on a given point (2 N.L.R.B. 983, 992). If the company has bargained during a strike, apparently in good faith, and has then withdrawn, and if it then formally discharges the strikers and imports strikebreakers, the situation is changed. There are new issues and the company is obligated to bargain once more (1 N.L.R.B. 714, 728).

The right to collective bargaining does not force the company to agree to anything particular; recognition does not necessarily bring an increase in pay. To be sure, the Act's sponsors assume that collective bargaining does usually get the workers more, whether it is a higher wage rate or security against arbitrary discharge. Where the union is not yet in a position to demand much, it is perhaps best able to test the company's good faith in bargaining: the Longshoremen at one point demanded of Agwilines only recognition and preference for their members, but the company would not seriously consider even this request (2 N.L.R.B. 1, 15-16).

Some companies' refusal has taken the special form of refusing to sign a written agreement with a union, even one embodying simply the current labor conditions.⁵⁶ Such a company sometimes pleads that unions do not keep agreements not to strike, although the Board's position is that collective agreements do prevent strike-interruptions of interstate commerce. In other words, it holds that refusal to sign anything (Girdler, head of Republic Steel and chairman of the American Iron and Steel Institute, was the symbol of this attitude in the steel strike of 1937) shows a failure to accept collective bargaining in good faith. Instead, the refusal seems calculated to "thwart and slowly stifle the Union by denying it the fruits of achievement" in the eyes of members and of prospective members (2 N.L.R.B. 39, 53). When an agreement is made, it is to be binding for a period, but it need not be for a long one: "... many collective agreements contain a clause permitting termination or modification by either party upon prescribed notice. The

⁵⁶ *Globe Cotton Mills v. N.L.R.B.*, 103 F.(2d) 91, 94.

duration of the agreement, like any of its substantive terms, is a matter for negotiation between the parties.”⁵⁷

ELECTIONS

When the Board certifies a majority union as the official bargaining agent, it not only reminds the company that it has a legal duty to bargain collectively but also gives the winning union an advantage over rival unions and the company. Where it is not clear that a certain union has a majority, the election is by secret ballot, so that the more timid employees have a chance to express their free preference.⁵⁸

Any union, except one favored or dominated by the employer, may ask to have an election held. Early in unionization campaigns and while they are weak, unions refrain from applying for elections. Employers are anxious to be allowed to apply for elections. Presumably they would apply just at the time when the union did not dare to, so that the inevitable defeat for the union would be a blow to its prestige.⁵⁹ The Board ruled against receiving election applications from companies, presumably on this ground, but after much agitation against the rule it was withdrawn in 1939. The employers' chief argument against it was that where there were two competing unions, neither strong enough to ask for an election, one union would picket if the company bargained with its rival. This might make a great deal of difference to a retail business but relatively few such cases occur.⁶⁰

In administering Section 9 the Board finds that many unions apply for

⁵⁷ 2 N.L.R.B. 39, 55. A company's announcement that it would not sign a written agreement was upheld in the *Inland Steel Case*, C.C.A.-7, January 9, 1940. But it was condemned in the *Art Metal Case*, C.C.A.-2, February 26, 1940. The issue went to the Supreme Court in these cases and the *Republic Steel Case*, C.C.A.-3, November 9, 1939.

⁵⁸ At first it was the custom of the Board to accept membership lists from unions and compare them with the pay rolls, as a substitute for elections. This practice was almost entirely confined to cases that had not reached a formal stage, and in 1939 was abandoned.

⁵⁹ Of forty-six employer petitions for elections under the New York law, sixteen seemed to be attempts to hold premature elections, said a member of the New York Board, quoted by R. Brooks, *Unions of Their Own Choosing*. Yale University Press. New Haven. 1939. P. 267, note 19. We saw above that the N.L.R.B. is inclined to postpone an election if the company has dominated or favored a certain union.

⁶⁰ The Board's new rule was that it would consider an employer's request where there were two or more bona fide unions, neither of which had asked for an election. In such a situation, if the one union has an obvious majority, it is not the other's duty to refrain from picketing for recognition, even though the N.L.R.A. forbids the company to recognize it. Section 13 of the Act, guaranteeing the right to strike, permits a union to picket as part of the strike. The federal anti-injunction law prevents such picketing from being attacked at least in the federal courts and at least by the injunction method. The Supreme Court in 1939 in the *Fur Workers' Case* rejected the plea that in such a case there was a jurisdictional dispute but no "labor dispute" under the anti-injunction law. The decision does not make clear whether, if the Board had certified the majority union in that case, the other union would still have been free to picket and boycott. People who used to think that picketing by any minority or outside union (even when no other union has a majority) should be prohibited now base their claim on the sanctity of the majority under the N.L.R.A. On the other hand, see the Supreme Court's *Lauf* decision, in Chapter 29, and *Lund v. Woodenware Workers* (1937) 19 F.Sup. 607.

an election when the company is refusing to bargain, or at least refusing until it has been shown that the union has the majority necessary to make bargaining a legal duty of the company (1 N.L.R.B. 123, 128; 2 N.L.R.B. 97, 99; 1109, 1113). A complaining union may be in competition with a rival union, a company union, or no union; in the two former cases it wants to exclude its rivals (2 N.L.R.B. 492, 496; 881, 883; 1109, 1114). In the latter, the company may be willing to recognize it as representing its members, but the union wants the prestige of full recognition under the Act (1 N.L.R.B. 153, 156; 2 N.L.R.B. 198, 203).

In cases where two nondependent unions are rivals, the Board has pleaded, as often as it could, that only a jurisdictional dispute was involved. Holding an election in such a case is a neutral act, yet the loser would blame the Board, especially if the loss turned on the Board's choice of a bargaining unit (see below). In a dispute between two A.F.L. unions or between two factions of the same union (as with the International Seamen's Union), the Board would refuse to consider the complaint, because the A.F.L., or the union, ought to be able to settle the matter (1 N.L.R.B. 530, 536-37; 604, 611). But where one faction sets up a new union (as the majority of the I.S.U. became the National Maritime Union) or the rival union joins the C.I.O., the Board takes jurisdiction even if it makes an enemy (2 N.L.R.B. 1036, 1041).

Bargaining unit. The unit for collective bargaining has to be determined if an election is to be held. Usually there is no problem; all parties accept the same unit. As we saw in Book III, a union seeks to bargain for those departments of an establishment over which it has jurisdiction or in which it has members. We also saw that there was disagreement over the question of whether unions should operate on a craft basis or on an industrial basis—whether the unionists in different departments in the same establishment were to form a common policy through a common union (with the danger to some of being outvoted by the other, perhaps less skilled, workers). We saw that this disagreement was crystallized in the A.F.L.-C.I.O. split.

But regardless of these differing principles, any union which applies for an election (or other determination) would like to get exclusive bargaining rights over as much territory as possible. If it has a very large majority in one department (or plant), it will ask to have the election include other departments (or plants) of the same company in which it has fewer members, in the expectation of winning these as well. Clearly the problem is the same as that of deciding on districts for the election of a legislature: each party tries to nullify the votes of some members of the other party by including them in a district which already safely belongs to it. When a union calls a strike in an industry where not all the shops are unionized, it includes the unorganized ones in the strike call in the belief that the majority will sweep the

others along. Similarly, if a collective-bargaining election were held for a whole industry, with the understanding that the majority union was to have exclusive rights for the whole industry, the union would be glad to participate—provided that it had a numerical majority of members or of members plus sympathizers. But if it did not have, it would prefer to have the election held only in firms where its strength was assured. Similarly, within a company, if the union has members in only certain departments, and its majority there is small or the departments are small compared to the nonunion departments, the union would seek to have the election confined to its departments. The company would naturally prefer it the other way round in each case. Sometimes there are two competing unions, usually belonging to the A.F.L. and the C.I.O. Each union, too, figures out what bargaining unit will give it the best chance to win an election.

The principle of self-determination necessitates the use of the smallest possible units. But since multiple representation (as in a legislature) is not aimed at, the use of small units may enable each of two or more unions to win a fraction of the field, with the almost inevitable result that the employees will not present a united front to the employers. "Congress, having settled the majority-rule issue, reopened it and handed it back to the board in the form of selecting the appropriate voting unit."⁶¹

In 1940 an industry-wide unit was adopted by the Board in anthracite coal mining, located in one small area, with a forty-year tradition of industry-wide bargaining.

Two years previously a region-wide unit was recognized by the Board in 1938—the longshore employers of the Pacific coast, whose association customarily dealt with the union.⁶² The C.I.O. union had a majority on this basis; the smaller local associations in the State of Washington, which had dealt with the A.F.L., could no longer make collective agreements with it. There are many city-wide employers' associations which might be used as official units. The A.F.L. as well as the C.I.O. has asked the Board for a multiple-employer unit, not to speak of bargaining on this basis in many cases.

Next to the region, the largest possible unit is the employer. In 1939 applications for elections were granted to Chrysler and to some other automobile companies. Each company has several plants in several towns. Should the unit be a whole company or each plant separately? In the former case the C.I.O. would win, or neither the A.F.L. nor the C.I.O. would win. If

⁶¹ Brooks, *op. cit.*, p. 89.

⁶² *Shipowners' Association of the Pacific Coast*, 7 N.L.R.B. 1002. The Act permits an "employer unit" and defines "employer" to include a person acting in an employer's interest and defines "person" to include an association. The association in this longshoremen's case was a federation of local associations. The Supreme Court said Congress had given it no power to review the unit except in connection with some other question. *A.F.L. v. N.L.R.B.*, January 2, 1940.

Several A.F.L. unions were overridden by the anthracite coal decision, too. *Stevens Coal Case* (1940) 19 N.L.R.B. No. 14,

the separate plants were the units, the A.F.L. might win some of them and the C.I.O. some. The Board decided on the latter voting unit. In his dissent E. S. Smith said that by trying to be fair to the A.F.L. the majority was overlooking the company's custom of deciding policy at the central office and was making possible a split that would further frustrate collective bargaining.⁶³ The C.I.O. won most plants and the Board than united these into one unit.

Most of the disputes have had to do with the question of whether a plant would be divided up into several bargaining units. The craft unions, usually those belong to the A.F.L., have wanted to confine elections to their departments.⁶⁴ Sometimes this was for the traditional reason that they were interested only in the welfare of the craft. But sometimes it was because they were not sure of carrying any other departments, even though the craft unions had been trying to organize the production workers in order to prevent the C.I.O. doing so. It is usually the employer who objects to the craft union's wishes, since he hopes that the larger unit will mean a nonunion or company-union majority. When two nondependent unions are in competition, they are often respectively an A.F.L. union strong among maintenance workers and a C.I.O. union strong among the more numerous production workers. The former will want the maintenance workers classed as a separate unit, the latter will not. The Board runs the risk of offending one federation or the other, whichever choice it makes. The company might prefer the A.F.L. for the whole plant, but, if that organization could not win the whole plant, the company would probably prefer two unions, since they might quarrel and weaken themselves.

Mutual interests. One general standard which the Board recognizes is the custom of the industry. In making its decisions it considers what departments have usually been taken together when there has been collective

⁶³ *The New York Times*, August 2, 1939.

The Board very frequently uses the employer (multiplant) unit. Most companies have fewer plants than Chrysler has. One firm that has more is General Motors. In 1940, before an election was held in its plants, the Board, the company, and the various unions agreed that each plant was to be a separate bargaining unit. The effect of such a plan is to make it more likely (than at Chrysler) that a bargaining unit will swing from the C.I.O. over to the A.F.L. or vice versa. There is nothing to stop two C.I.O. locals in two bargaining units from making joint demands on a company. In fact the General Motors plan stated that the company's general office agreed to negotiate with national union officers on matters that affect several plants.

The plan also included an opportunity for certain crafts (pattern makers and others) to vote either for their craft union or for one of the general unions. If one of these departments voted for a general union which also won the rest of the plant, that department was to merge, for the future, into the plant unit. On this so-called "Globe" method of voting, see below, at notes 66 and 68.

⁶⁴ Partly because craft unions are taking in new departments and partly because A.F.L. unions are not in fact typically pure craft unions, the first 310 representation petitions to the N.L.R.B. by A.F.L. unions were 210 on an industrial basis and 100 on a craft basis. N.L.R.B., *Report to Senate Committee*, April, 1939, p. 42.

bargaining in the company or in the industry. It also considers the scope of unions in the field, both as to geographical extent and as to the eligibility rules of unions. It has decided in many cases that engineers, electricians, and other maintenance men should be a separate group, since they "have their separate organizations and consider their interests as distinct from the production workers" (2 N.L.R.B. 298, 304). Where a craft union reaches out to organize production workers in competition with an industrial union, the Board is inclined to accept its attempt as deciding for a plant unit (2 N.L.R.B. 872, 876; but see 5 N.L.R.B. 61).

Another standard which the Board recognizes is the degree of mutual interest, in employment questions, which different groups have. Foremen, who are usually excluded from unions, are excluded by the Board from voting if they are identified with the management and can fire or recommend firing, but not if they are men engaged on production who take the place of absent foremen (2 N.L.R.B. 159, 165; 881, 885; 1048, 1052). Similarly office help is usually considered a separate group, though companies very often urge their inclusion, presumably because they are less likely to vote for the union than are others.

In maritime matters the Board has ruled that licensed officers employed in unlicensed positions should not vote with the licensed employees (though eligible to the same union) in a case where "these particular men will never have an opportunity in the future to be promoted to positions where licenses are required"; but those who are only temporarily at unlicensed work, between licensed jobs, are not excluded (2 N.L.R.B. 747, 751). Similarly, where licensed men shifted, from voyage to voyage, among the grades of licensed work (chief, assistant, and junior engineer), the three grades were held to have mutual interests (1 N.L.R.B. 384, 389). In general, similarities in the nature of the work done, in skill, and in methods of paying wages will argue for inclusion in the same unit.

In any given case these various criteria may point in opposite directions and the Board, according to one commentator, can make its decisions according to its own beliefs in the desirability of craft vs. industrial unionism—"tempered by the realities of the relative distribution of economic and political power as between the A.F. of L. and the C.I.O."⁶⁵ The Board has yielded occasionally to A.F.L. pressure. It professes to give "great weight to the desires of the employees themselves."⁶⁶ That is, when there is no clear reason why the craft unit should be used or not used, the Board will let the craftsmen claimed by the A.F.L. union decide for themselves whether they wish to be in the same bargaining unit with the rest of the plant. Typically this is accomplished without a separate election since the disputed depart-

⁶⁵ Douglas, *op. cit.*, p. 748.

⁶⁶ N.L.R.B., *Second Annual Report*, 1936-37, p. 127.

ment may vote for either the craft union, the industrial union, or no union at the same time that the production workers are voting for the industrial union or no union. If a majority in the craft vote for the industrial union the craft is joined to the production workers; otherwise it is not (3 N.L.R.B. 294; 4 N.L.R.B. 246, 535).

Of the first 100 cases in which the A.F.L. asked for a craft unit, the request was granted in 81. In the others it was usually rejected because the craft union had substantially no members in the department claimed or because the department had never been considered a separate craft.⁶⁷ And in 1939 the Board ruled as to the American Can Company that the plant unit, once in use, should not be broken up into craft units.⁶⁸

After it is clear that all the parties are agreed as to the correct bargaining unit or, if it is in dispute, the Board has decided, in about one out of every five of the cases that are filed at the Board's regional offices the company will concede that the union has the majority. In more than a quarter of the cases the evidence is so clear against the union that the union will withdraw the case or the Board will dismiss it. In about a third of the cases the companies (especially the bigger companies) consent to the elections (or, in some cases, in the past, to a comparison of the pay roll with a list of members or supporters submitted by the union). Altogether four-fifths of the cases are thus disposed of informally whether brought by A.F.L., C.I.O., or other unions. The Board at first took about forty days to close the average case of this kind, but in 1938 reduced it below thirty.⁶⁹

In the remaining 20 per cent of the cases, after the hearings an election is ordered and held. The average A.F.L. case requires about seven weeks from its filing to its hearing and another seven until the Board announces the result; the average C.I.O. case takes about a quarter again as long.⁷⁰ In the Board's first four years in the more than two thousand elections, either consent elections or ordered elections, the average vote was about three hundred. This was about one election to every three representation petitions filed. Representation petitions, in turn, comprised about two-fifths of all petitions.⁷¹

What is a majority? To win an election an absolute majority of all employees within the unit used to be required. The railroad Mediation Board insisted on only a majority of those voting, provided that a majority of the eligibles voted. When this plan was upheld by the courts, the N.L.R.B. adopted it. When in the *R.C.A. Case* a majority of the eligibles failed to vote because a boycott was called by a company union, the Board said:

⁶⁷ N.L.R.B., *Report to Senate Committee*, April 1939, p. 153.

⁶⁸ *The New York Times*, August 3, 1939. There was one dissent.

⁶⁹ N.L.R.B., *Report to Senate Committee*, April 1939, pp. 335, 339, 345. Figures cover the first three and a half years of the Board, to January 1, 1939.

⁷⁰ *Ibid.*, pp. 335, 340, 341; cf. 344.

⁷¹ N.L.R.B., *Press Release*, July 29, 1939. Figures to July 1.

Minority organizations merely by peacefully refraining from voting could prevent certification of organizations which they could not defeat in an election. Even when their strength was insufficient to make a peaceful boycott effective, such minority organizations by waging a campaign of terrorism and intimidation could keep enough employees from participating to thwart certification. (2 N.L.R.B. 168.)

Moreover, if an election is boycotted by all but union sympathizers, the secrecy of the ballot is lost. Sympathizers will be known if they vote, and their fear of discrimination may keep them away, it was stated in the *Cushman Shoe Case* (2 N.L.R.B. 1015, 1034). To overcome the effect of such boycotts, certificates were issued in these two cases to the unions receiving the majorities of the votes cast, and the rule was announced to prevent future boycotts. "The majority of the votes cast" is the plan used in political elections. That there seems to be more incentive to vote in industrial elections than in political ones is illustrated by the fact that in 1937, 95 per cent of eligible workers voted in N.L.R.B. elections.

If more than two unions appear on a ballot and none gets a majority, a runoff election is necessary. Before the R.C.A. ruling was announced, persons preferring no union could express their attitude by staying away from the polls. Under the R.C.A. ruling this expression would no longer have a chance of influencing the result—unless a place were provided on the ballot to vote for "no union." When this procedure was adopted after the *R.C.A. Case* it resulted, in a number of cases, in a majority for no one on the first ballot, so that a runoff was necessary.

The Board considers a collusive contract with a union no bar to holding an election at the request of another union. But where there is a certification or a noncollusive agreement, the Board's policy is to refuse an election petition from a competing union until a year has elapsed since the agreement or the certification. If a year has gone by, a five-year agreement will not keep the Board from redetermining the majority (7 N.L.R.B. 662). In fact, if there is to be a new election, the Board tries to hold it before the expiration of the agreement so that the majority choice may be known in time for the new negotiations (5 N.L.R.B. 252). In the *National Sugar Refining Case*, the employees changed their allegiance a year after the election, but only a month after a contract had been signed by the original majority union. The Board refused to hold an election until the contract had run a year although one member felt that it was enough that a year had gone by since the election (10 N.L.R.B. No. 124).

A Board decision about the bargaining unit, a decision to hold an election or not, a decision to certify or not, cannot be reviewed by a court. Although it may have a large effect on the status of the parties—by its allocation of prestige to the company or the union or to one of two unions, or by its

implications that a union is or is not an exclusive agent—yet under the Act the courts do not review these decisions because they are not final orders of the Board. If the company refuses to recognize the union which is recognized by the Board, the Board may order it to do so, and the company may then have the matter reviewed by a court.⁷²

PROCEDURE AND ENFORCEMENT

The Board which administers the National Labor Relations Act is made up of three members, appointed for five years by the President and the Senate. It maintains twenty-two regional offices which prepare cases against employers. They try to avoid formal trials; most cases are disposed of in informal conferences with regional directors. In many the union is advised not to make a complaint—that it does not have a strong legal case. In others the company offers to deal with the union, either because of the publicity involved when a complaint goes to a hearing and a decision, or because of the threat of legal penalties, or because a conciliatory spirit results from talking things over.

Even excluding cases dropped in the very first stages, 94 per cent of the Board's cases are disposed of either before any formal action is taken or before it is completed. The Board handled 22,466 cases in the four years ended June 30, 1939. On that day 4,217 of them were pending. All of them together involved over 5,000,000 workers. Of the closed cases, 53 per cent were closed by the agreement of the parties, 26 per cent were withdrawn by the petitioning unions or workers, and 16 per cent were dismissed by the regional directors and the Board. This left only 6 per cent to be carried through to a final decision.⁷³ Some companies were absolved. Of those who were not, some accepted the awards of trial examiners, and others ap-

⁷² The A.F.L. vainly sued the Board over the Pacific longshoremen's bargaining-unit question. *A.F.L. v. N.L.R.B.*, Supreme Court of the United States, January 2, 1940. The A.F.L. has sought to amend the Act. The same sort of decision was made under the New York law in the *Wallach Case* (1938) 277 N.Y. 345; and under the Pennsylvania law in *McNary's Appeal*, April 13, 1938, C.C.H., Par. 18,250. If neither of two unions gets a majority because many vote for "no union," the runoff election is between the higher union and "no union." The Supreme Court has held that it has no power to order the Board instead to have the runoff between the two unions. *N.L.R.B. v. International Brotherhood of Electrical Workers*, January 2, 1940.

The issue here seems to be whether the supporters of each of the two competing unions are likely to be irrevocably opposed to the other union and would be given the maximum freedom of choice by being allowed to reject all collective bargaining if they wish; or whether one is to assume, instead, that the majority definitely want collective bargaining, since they voted for one union or the other, and that the others should be allowed to help the majority choose which of the two agencies is to do the bargaining.

⁷³ The New York State Labor Relations Board reported 5 per cent during the two years ended June 30, 1939. Out of 3,133 cases disposed of, only 6.3 per cent reached the stage of hearings, and only 5 per cent the stage of formal orders directing an election, directing the cessation of unfair practices, or dismissing the proceedings. The average case involved about 54 employees. The Board averted or settled 584 strikes. Of final adjudications in the courts the Board won 35 and lost 4. *N.Y.S.L.R.B. Press Release*, July 24, 1939.

pealed to the Board. Some of this 6 per cent were transferred to state labor relations boards or to federal conciliators. Though these conciliators, rather than the Board, have the duty of smoothing over strike situations, the Board's work naturally takes in these situations too, and it sometimes helps to settle them. Of the Board's closed cases, for example, 12 per cent involved strikes. Of these strikes, 75 per cent were settled and 64 per cent of the workers were reinstated. The Board claims also to have averted 736 strikes which would have involved about 180,000 workers. The Board was responsible for the reinstatement of 16,769 workers after discriminatory discharges.⁷⁴

Public hearings. If a union complains under the Act and the company neither explains nor agrees to change its methods, the Board begins formal action by holding a public hearing before a trial examiner. These proceedings are relatively informal since the Act states that traditional legal rules of evidence need not be used. Although the power of the Board and its examiner to subpoena witnesses is made more imposing by the fact that the Act provides a penalty of \$5,000 for anyone who impedes an agent of the Board, examiners have had trouble in several cases. In 1938, for the hearings in the *Weirton Case*, held in West Virginia, the Board employed as examiner a prominent local attorney in an attempt to avoid the charge of "carpetbagging"; but the leader of the company's staff of attorneys at the trial provoked the examiner continually until the examiner finally expelled him from the courtroom. This expulsion was followed by street demonstrations, apparently organized by the company, so that the examiner had to move the hearing to a neighboring city. He later resigned from the case. In Iowa the governor declared martial law during the Maytag Washer strike and forbade the N.L.R.B. examiner to hold hearings on the ground that they obstructed settlement. This ban was later withdrawn.⁷⁵

Due process of law. After the trial examiner makes his report and recommendation, the Board considers it, along with the verbatim record of the hearings. The defeated party has no right to test the examiner's report in the courts, but it has the right to file with the Board a reply to the report; this rule was adopted in April, 1938. Before that it was, to be sure, the practice of the Board to receive additional briefs when asked but its rules left it at the

⁷⁴ N.L.R.B. release.

⁷⁵ *The New York Times*, July 9 to August 20, 1939. Earlier an Arkansas court had undertaken to enjoin hearings which had then to be moved across the state line. This method was not available to escape the federal injunctions issued before the Supreme Court upheld the Board's constitutionality. The Court banned injunctions against Board hearings, saying that the company could get a court review after the Board issued its order. *Myers v. Bethlehem Shipbuilding Corporation* (1938) 303 U.S. 41. Similarly it said that the Board was free to investigate complaints even though the company thought that interstate commerce was not involved. *Newport News Shipbuilding Case* (1938) 303 U.S. 54; but see *International Molders Union v. N.L.R.B.* (1939) 26 F. Sup. 423.

Board's discretion. The new rule was made after the Supreme Court had chided the Department of Agriculture for failing to allow such a reply. The Court decision led to a controversy over the functions of administrative tribunals and over the frequent legislative stipulation that courts may review the law but not the facts found by such tribunals. It was charged that an administrative commission was likely to rely on subordinates and that its members (somewhat like appellate judges) did not always read the whole transcript. The lawyer for the Ford Motor Company made it the occasion for intimating, under guise of a legal motion, that the Board had asked John L. Lewis how to decide the Ford case. Republic Steel (which had made no request to file a reply) charged that the Board took away its property without "due process" when it failed to give it the *right* to reply. The Supreme Court in this case rendered a decision which was both prompt and sympathetic to the Board, permitting it to proceed with its plan of withdrawing its order against the company until it had given the company formal notification under the new rules that it could file a reply brief.⁷⁶

Court review. If the Board issues an order which the company does not obey, either it or the company may go to a federal Circuit Court and have the case reviewed. Further appeal is to the Supreme Court. The Board's findings of fact are binding on the courts if they are supported by "evidence." The courts interpret this to mean "substantial evidence," especially since the Board is allowed to hear hearsay evidence. To the extent that a court reconsiders the facts found by an administrative commission, the company succeeds in transferring the trial from the commission to the court. This transfer has usually been made complete by the companies' practice of withholding evidence in the commission's hearing and bringing it before the reviewing court as "new." This practice is in contrast to the tradition in appeals from court decisions; appellate courts admit new evidence only in emergencies. The Act invoked that tradition. Not only is the Board the sole judge of the facts, but also, if there is new evidence or a new objection, the case must go back to the Board, except under "extraordinary circumstances." Another escape for the company might be to claim that, while the case is in the courts, there should be no pay accruing to employees whom the Board had ordered reinstated. This sort of claim is anticipated in a clause saying that the Board's order is suspended only if the court specifically says so.

If the Circuit Court agrees with the Board's order it issues a court order directing the company to cease and desist from the acts listed, and to do

⁷⁶ *In the Matter of the Petition of the National Labor Relations Board* (1938) 304 U.S. 486. Just before, the Court had held that a tentative report by a trial examiner and a hearing on it were not essential to "due process," *Mackay Case* (1938) 304 U.S. 333. Similarly *Consolidated Edison Case* (1938) 305 U.S. 197 and *Ford Case* (1939) 305 U.S. 364. But see *N.L.R.B. v. Cherry Cotton Mills* (1938) 98 F.(2d) 444.

positive things like posting notices that it will cease unfair practices or offering reinstatement and giving back pay. The Board can ask that a court order be issued even though the company can show that it is obeying the Board.⁷⁷

In any early court case, the *Weirton Steel Case*, under Section 7(a) of the N.R.A., the federal judge said that he could not enjoin the company because of the federal anti-injunction law. Senator Wagner was then drawing up his bill and was making the enforcement of Board decisions depend on court orders; so a clause was included to keep the anti-injunction law from limiting the courts in these cases.

In general the company's legal duties date from the time of the court order against it; there is no punishment for contempt of a Board order before a circuit court has validated it. In most cases, then, not only does an appeal to the courts mean a chance to overthrow the order but also, even if it is not overthrown, the appeal means a delay in enforcement, a delay which will discourage prospective union members. Another advantage of appeal is that, if the company loses, it is not charged court costs. On the other hand, back pay keeps accruing to workers who were fired discriminatorily, and wrongful acts in the past may be taken to show an antiunion bias and may become the basis for commands to take strikers back.

The Board issues many orders based on stipulations, that is, statements of fact agreed to by company and union, and most of the orders it obtains from courts are "consent decrees." Like other litigants, a union is often inclined to refrain from pressing every last charge in order to get a quick settlement. After the Harlan conspiracy trial of coal operators and after Board and court orders had been issued against several of them (Chapter 27), the operators signed an agreement with the C.I.O. union which included an understanding that further proceedings would be dropped. The A.F.L. protested this barter (since it had been hoping to have its competing union sign Harlan). The Board's practice is to accept any settlement-agreement which has been made by a responsible agent of the Board, whether the Board itself approves of it or not.⁷⁸

The first contempt suit to enforce a court order started about three years after the Board was created, in the *Remington-Rand Case*, with the decision that, "except for a few minor legal technicalities, compliance has been ob-

⁷⁷ If only an order to do certain things were involved, the order would not be appropriate after the company had complied. But an order not to do certain things is important in the future as well as in the present. *N.L.R.B. v. Pure Oil Co.*, C.C.A.-5, April 24, 1939. A company often objects to posting a notice saying that it will cease and desist from unfair labor practices which it does not admit having committed in the past; it protests that this sounds like a confession of guilt. Thus some courts required merely that the company post the Board's order and say that it was approved by the court and that the company would comply with it, but the Supreme Court overruled this view in *N.L.R.B. v. Falk Corp.*, January 2, 1940.

⁷⁸ *N.L.R.B., Report to Senate Committee*, April 1939, p. 203. It is unclear whether the courts will let a union hold these suspended proceedings over an employer's head. *United Baking Case* (New York, 1939) C.C.H., Pars. 18,316-17.

tained.”⁷⁹ A court found the Hopwood Retinning Company guilty of contempt a year after the court order.⁸⁰ Another court refused to hold a company in contempt because the Board’s order was self-contradictory.⁸¹ The Board, not the union, is to bring any contempt actions.⁸² A court threatened to jail for contempt A.F.L. Teamsters if they did anything to prevent the reinstatement of two C.I.O. members.⁸³

Related penalties. Criminal penalties were imposed for one particular unfair labor practice when Congress in 1936 passed the Byrnes law. Aimed at the use of thugs as strikebreakers, it forbade bringing a person across a state line “with intent to employ such person to obstruct or interfere, in any manner, with the right of peaceful picketing” or of “organization.” This law is rather vague, and under it James Rand, of Remington-Rand, and Pearl Bergoff, boss strikebreaker, were tried in 1937 and acquitted.⁸⁴

Another method of attack on unfair labor practices is a criminal suit to punish a conspiracy to deprive persons of their rights under federal law. We have commented on the suit by the Department of Justice against the Harlan employers. When based on the N.L.R.A., such a suit may punish any unfair practice committed since the passage of the act if conspiracy can be proved. In the *Harlan Case* the jury disagreed (1938), but the threat of a new trial probably influenced the employers to deal with the United Mine Workers (though they once more resisted in May, 1939). A conspiracy suit was asked against Mayor Hague of Jersey City, but the Department of Justice did not undertake it; this method of enforcement is a difficult one and is unlikely to be used very often.

Beside this indirect use of the N.L.R.A., we have seen (Chapter 27) that the Supreme Court seemed to base its injunction against Mayor Hague and Jersey City on the right of the C.I.O. to discuss a federal law (the N.L.R.A.) in public. We have also seen that companies have tried to get injunctions on the basis of the N.L.R.A. against picketing by minority unions. Of the number of other attempts to claim rights under the Act indirectly, most of them have been made by unions. Seamen got a judgment in a federal district court

⁷⁹ Letter from N.L.R.B., April 12, 1939.

⁸⁰ *N.L.R.B. v. Hopwood Retinning Co.* (C.C.A.-2, 1939) 104 F.(2d) 302. The company had created a second corporation in order to avoid liability. The Court treated the second as the agent of the first and also held in contempt the chief officer of the corporations, according to custom. Back pay due amounted to \$200,000.

⁸¹ *N.L.R.B. v. Bell Oil and Gas Co.*, C.C.A.-5, Sept. 20, 1938.

⁸² *Amalgamated Utility Workers v. Consolidated Edison Co.* (C.C.A.-2, 1939) 106 F.(2d) 991. Affirmed by the Supreme Court, February 26, 1940.

⁸³ *Evenson and Levering Case*, C.C.A.-3, June 1939, reported in 4 Labor Relations Reporter 544. Cf. 8 N.L.R.B. 602, 10 N.L.R.B. 785. The C.C.A.-3 refused to hold the company in contempt, August 9, 1939.

⁸⁴ *The New York Times*, Nov. 19, 1937, p. 1, col. 4. Bergoff’s type of work is detailed in E. Levinson, *I Break Strikes: the Technique of Pearl L. Bergoff*. Robert M. McBride & Company. New York. 1935.

for wrongful discharge under the N.L.R.A. (mentioned, 12 N.L.R.B. No. 133). Several C.I.O. unions sued A.F.L. unions and employers for conspiring to keep contracts from the C.I.O.⁸⁵ The A.F.L. Electricians vainly tried to get an injunction against the A.F.L. Hod Carriers on the ground that the Electricians had made their contract with the employer in accordance with the N.L.R.A.⁸⁶

Another indirect or supplemental method of enforcing the N.L.R.A. has been proposed in order to increase the speed and certainty of enforcement. This is the method of governmental boycott. At the time that the N.R.A. died there were few attempts to enforce its codes except through the federal government's refusal to buy from companies which had lost their Blue Eagles for violating a code. Violations were sometimes of wage and hour clauses, occasionally of Section 7(a). When this practice of governmental boycott was embodied in the Walsh-Healey Act of 1936, wages, hours, and child labor were covered, but collective bargaining was omitted. The N.L.R.A. presumably covered it, but in 1938 the C.I.O. tried to give additional force to the N.L.R.A. by asking Congress to supplement or amend the Walsh-Healey Act so as to withdraw federal loans and federal purchasing, or at least the latter, from such notorious violators as Remington-Rand then was. Moreover, there were complaints that local governments were receiving large federal loans at the time that they were engaging in antiunion practices;⁸⁷ the bill introduced by Senator Wagner included local governments, which were totally exempt from the N.L.R.A. This new measure was not passed; the C.I.O. repropoed it in 1940.

In 1939 the La Follette Committee introduced a bill to punish "oppressive labor practices" which it had found prevalent during its investigation. In Chapter 27 we saw that this measure was aimed at the use of company police outside the plant and at the use or possession of industrial munitions such as tear gas by companies, strikers, or anyone other than the regular police. In addition it was aimed at spying and the employment of strikebreakers, which it defined as persons employed during the strike at more than current wage rates. If these individuals were paid more, the bill presumed them to have been hired not to work but to intimidate strikers, as has happened often in the past. While some of these practices had been condemned by the N.L.R.B., the new proposed penalties were planned to serve as a more effective deterrent than mere Board orders had proved to be. Board orders are issued only after a certain amount of objectionable activity has already taken

⁸⁵ *The New York Times*, July 16, 1939, p. 6E.

⁸⁶ *Blankenship v. Kurfman*, 96 F.(2d) 454.

⁸⁷ (March 28, 1938) 2 Labor Relations Reporter 112. Cf. (July 1938) 7 I.J.A. 8-9; and *Government Contracts*: Hearings on H.R. 9745, 75th Congress, 3d session (1938).

The Board was sometimes able to delay orders to N.L.R.A. violators, but not to prevent them. 5 Labor Relations Reporter 743.

place and even then the Board has to show that the actions are intended to discourage unionism. It cannot issue orders against persons who supply men or materials to be used by antiunion employers. The La Follette bill strove to correct these shortcomings. In doing so it went much further than the Byrnes Act. It adopted the boycott enforcement measure which had been proposed in 1938, for it provided not only for criminal penalties but also, in the case of government contractors, for liquidated damages and obligated the government to refuse to let other contracts to offenders.⁸⁸ The bill was not passed.

ALTERNATIVE LABOR RELATIONS PATTERNS

In Chapter 30 we saw four pre-N.L.R.A. attempts to give government aid to unions: the early yellow-dog laws, wartime regulations, the N.R.A., and the railroad laws. In this section we shall see that the state labor relations acts of 1937 provided a pattern slightly different from the N.L.R.A. and that those of 1939 provided a pattern that diverged still more, especially in the direction of forbidding strikes and limiting unions.

The advocates of these newer laws, of course, hoped to make corresponding changes in the national law. They had also hoped to prevent the passage of any national law outside of transportation by their use of a limited definition of "interstate commerce," but Congress in 1935 (in defiance of the Supreme Court) and the Court in 1937 (in defiance of expectation) decided otherwise. The Court's decisions indicated that manufacturing as well as interstate transportation was covered. But this left uncovered the retailers, hotels, restaurants, laundries, dry cleaners, trolleys, taxis, local trucks, local electricity and gas companies, and building. State laws were talked about, but before April, 1937, it was doubted whether this sort of labor relations regulation was constitutional; after April most of the legislatures had adjourned. However, before adjournment state laws were passed in Massachusetts, New York, Pennsylvania, Utah, and Wisconsin which applied the principles of the federal law to local employers. They also used the federal law's language as to exceptions, so that governmental, agricultural, and domestic employees were excluded. Since the employees of nonprofit institutions were not excluded in the federal law, because they were not engaged in interstate commerce, the state legislatures, except New York's, did not think to exclude them.

The N.L.R.B. interprets the exemption of farm workers to mean that the N.L.R.A. covers the packing of fruits and vegetables,⁸⁹ but the packer

⁸⁸ S. 1970, 76th Congress, 1st session. Explanatory statement in *Congressional Record*, March 28, 1939, p. 4763.

⁸⁹ *American Fruit Growers Case*, 10 N.L.R.B. No. 21. *North Whittier Heights Citrus Association Case*, 10 N.L.R.B. No. 113. Cf. *Santa Cruz Fruit Packing Co. v. N.L.R.B.* (1938) 303 U.S.

employers oppose it, relying not on the absence of relation to interstate commerce but on the political power of the farmers. Though farm workers have in general not been interested in forming unions, the I.W.W. tradition has not died out on the West coast, where the increase of large-scale methods has introduced factorylike situations. After 1933 there were some attempts at unionization which the California employers tried to repress and they feared that these attempts would be encouraged by government aid.⁹⁰

There are still questions as to just who is exempted from the labor relations laws; the New York courts have held that life insurance salesmen working on commissions are covered.⁹¹ After its 1937 decisions the federal Supreme Court continued to resolve doubts in favor of including employers under interstate commerce. It included an electrical utility company doing chiefly an intrastate business because the functioning of railroads and docks depended on it.⁹² It included a small garment contracting shop which was not itself engaged in interstate commerce, because it was part of a general process of interstate trade and because, though it was small, the industry of which it was a part was large.⁹³ Even though a business is under the federal law, a state board may consider a petition against it, either because the union happens to come to it and the employer does not protest, or because the state court argues that Congress did not undertake to assume exclusive jurisdiction of the labor relations of interstate firms,⁹⁴ or because part of the company's business is retailing and is held to be intrastate.⁹⁵

State laws of 1937. While the provisions of the 1937 state laws were much like those of the N.L.R.A., there were six main points of difference.

1. *Aid to unions.* The laws were somewhat more explicit in the rules aiding unions. Wisconsin and New York forbade spying and black-listing and barred company unions from elections. New York forbade elections in cases of jurisdictional disputes within a union or federation, forbade strike-breakers to vote, and forbade elections on company property or with company assistance. It provided for run-off elections in case there were three organizations on the ballot and none got a majority. All these points were part of the N.L.R.B. rules, but not of the N.L.R.A. itself.

453. The House investigating committee of 1939 was to consider the definition of interstate commerce, with canners and packers the most likely beneficiaries of this reconsideration.

⁹⁰ See Chapter 27. In January, 1940, the La Follette Committee held hearings in California.

⁹¹ *Metropolitan Life Insurance Co. v. N.Y.S.L.R.B.*, Court of Appeals of New York, April 11, 1939. The court said that the company could make individual bargains with the men too. It held the law constitutional and said it would not meddle with the Board's decision about what was the correct bargaining unit.

⁹² *Consolidated Edison Case* (1938) 305 U.S. 197.

⁹³ *Fainblatt Case* (1939) 306 U.S. 601.

⁹⁴ *Rueping Leather Case*, Supreme Court of Wisconsin, May 17, 1938.

⁹⁵ *Davega-City Radio Case*, *New York Law Journal*, March 24, 1938, col. 6, p. 1432.

2. *Advantages to companies.* Companies were treated more mildly by the New York than by the federal law, in that they were specifically allowed to petition for elections. In the first two years, ended July, 1939, out of nearly 3,000 election petitions filed, 86 were filed by employers.⁹⁶ The New York law instructs the Board to use its judgment and not to hold an election simply because it is asked to by a company or by employees inspired by the company. As we have seen, the N.L.R.B. in 1939 ruled that employers might petition.

3. *Advantages to the A.F.L.* The A.F.L. gained one concession in the Wisconsin law and another in the New York law. As we have seen, the Wisconsin law countenanced contracts even though they were made with favored unions: this was an advantage to employers and to the A.F.L. in cases in which its affiliates were favored. In New York the law, like the railway law, called for elections by crafts; and while the N.L.R.B. often recognizes separate crafts it does not always do so.

In its first year the New York board had no occasion to decide between craft and industrial units, partly because the service trades do not have the craft divisions characteristic of manufacturing and railroading.⁹⁷

4. *Internal affairs of unions.* The internal affairs of unions were regulated by a clause in the Pennsylvania law which denied unions the benefits of the Act if they exclude people because of race, creed, or color. The Wisconsin law provided for a committee of unionists to whom the board might refer complaints of unethical conduct by unions and a similar committee of employers. If the Wisconsin Board found that either side had broken a contract, it was to refer the matter to the appropriate committee. Because of a clause in the 1937 Wisconsin law requiring unions to register, the Board has labeled several organizations "dominated," although it has not done so in other cases, such as those in which "interference" is charged before the N.L.R.B.⁹⁸

5. *Mediation.* As we saw, mediation is a by-product of the labor boards and Wisconsin's 1937 law definitely incorporated the state mediation functions into the work of the Board. In New York and Pennsylvania new mediation laws were passed at the time the labor relations laws were.

6. *Strike.* Strike activities were limited by a Massachusetts clause making sit-downs "unfair."

Proposals to limit unions. If these laws had been passed a little later in 1937, they might have included clauses which limited strike activities still

⁹⁶ *The New York Times*, August 9, 1939, p. 6. Out of 4,406 petitions of all sorts, 2,766 were filed by A.F.L. unions, 882 by C.I.O. unions, 442 by other unions, 230 by individuals, and 86 by employers.

⁹⁷ (August 1938) 7 I.J.A. 19-20.

⁹⁸ *Ibid.*

more, for 1937 saw a peak of strikes as well as of business activity. The accompanying reaction against the rise of unions was expressed not only in a demand for the revision of the N.L.R.A. but also in a demand for legal restrictions on unions, supplementing those described in Chapters 27 and 28.

These demands would have come regardless of the N.L.R.A., but the existence of the N.L.R.A. provided a method of propaganda for restrictions. It was said that the N.L.R.A. was one-sided; it ran only against employers. Therefore, it was argued, restrictions on unions ought to be written in. If coercion by companies was forbidden, unions should be forbidden to coerce people into joining or to use sit-down strikes. Other analogies were drawn. If the government supervises elections for a collective bargaining representative, it might well supervise elections within unions, rumored to be so undemocratic as to keep politicians in office who worked for their own interest and not for those of the members, sometimes so much so as to be racketeers. Similarly, the government might require elections before a strike, since not all unions did so, and since, it was reported, union officials ordered members to strike when the latter preferred not to. The government promoted collective agreements and since, it was said, unions continually broke them, the government ought to penalize the violators. In order to make more effective the suits brought against unions for breaking contracts and for offenses connected with strike-picketing, employers' lawyers urged that unions be held more definitely responsible for the acts of members and officers (for instance through the relaxation of the requirement of the anti-injunction laws that the company prove that the union authorized the action), and that suits for damages be made easier by making the union treasury more readily suable. The usual suggestion here was that unions be required to incorporate. The closed shop was attacked as a monopoly; one compromise proposed was that *closed unions* be forbidden—whether they kept out new members by high initiation fees, apprentice limitation, discrimination against Negroes, or simple prohibition. A related criticism charges union officials with expelling men for opposing them or for trivial reasons. The expelled person has a right to go to court if he has used all the means of seeking reinstatement that the union affords, but it was proposed to give him quicker redress by setting up a public appeal board. The current sentiment against aliens was made the basis of a proposal that no alien be allowed to be a union officer.

Some of the proposals suggested that violations of the new rules by unions be made a crime or an unfair labor practice; others that an offending union be deprived of the benefits of the Act. The latter was probably the most severe of the punishments suggested.⁹⁹

Some critics of the N.L.R.A. proposed amendments which were phrased very generally (as, indeed, the N.L.R.A. is) and which would have forbidden

⁹⁹ *Fansteel Case* (1939) 306 U.S. 240; *Sands Case* (1939) 306 U.S. 332.

an uncertain and possibly large number of ordinary union activities. The Chamber of Commerce of the United States, for example, suggested that it ought to be an unfair practice:

For any person, in connection with any labor dispute, to interfere with the free exercise or enjoyment by any person of any right or privilege secured to him by the Constitution or laws of the United States or of any state, or to damage or destroy the property of any person or to violate or interfere with the exercise of any person's rights in real or personal property.¹⁰⁰

Senator Steiwer suggested that it be made a crime for employees to interfere "with the free movement of products in interstate commerce."¹⁰¹

The chief reply made by unionists to these suggestions was that laws against union activity now—and it would be true of future laws, too—are interpreted broadly to the disadvantage of unions and ban what many people consider legitimate actions. And the more rules there are, the easier it is for spies to join the union and manufacture a case against it. Many cases of coercive discrimination by companies are too well hidden to be attacked under the N.L.R.A., whereas unions do not have the same resources of discrimination (except where there is a thoroughly closed shop). Thus a law which apparently bound both sides equally might work very unequally.

Unions also reply, as to incorporation, that in most courts a union and its treasury are considered suable, and if incorporation of unions simply meant limited liability, it actually would prevent a company from suing the members. But since presumably the companies' lawyers see some advantage in forcing incorporation, it very likely lies in their hope that a union could be accused of various wrongs and have its charter taken away. If the law were strong enough, this might kill the union; at the least it would injure its prestige.

Unions object that the proposal to require a majority for a strike is phrased so as to forbid union members to join their fellows (in other shops) in a strike if in their shop the majority (perhaps made up of nonmembers) voted "no." At present when unions take strike votes it is of course only among members, and all members are bound by the result. Unionists often call a strike when their members are in the minority, on the chance that they can make it appeal to the others and turn it into a majority strike, as in steel in 1919 and in the General Motors strike in 1937. The proposal would make this practice illegal.

Supervision of elections within unions, like many of the proposals listed here, is looked on by unionists as an entering wedge for domination by

¹⁰⁰ Chamber of Commerce of the United States, *Legislation Relating to Labor Disputes*. Chamber of Commerce of the United States. Washington, D. C. March, 1938.

¹⁰¹ *The New York Times*, January 2, 1938, p. 10.

government. Any government, since the unions' political power is still small, is looked on as somewhat anti-labor, and unionists fear that government supervision of unions would be a convenient lever for reducing them to vassalage if a fascist or other antiunion government came to power.¹⁰²

The antiunion pressure in 1938 led the Roosevelt Administration to send a committee of inquiry to Great Britain and Sweden to report on labor relations there. These two countries were chosen not only because they were said to be relatively peaceful but also because employers constantly held up Great Britain as a model, apparently under the impression that it had compulsory arbitration, or at least a ban on sympathetic strikes and boycotts. The committee's report stressed the acceptance of collective bargaining by employees in European democracies.¹⁰³

The Board's response to critics ran partly in those same terms: If companies would accept collective bargaining the Board would be able to retire; it already found itself entering on a quieter phase, in which the law had been interpreted to employers and they were coming to accept it—in contrast to 1935-37, two years of being tied up by injunctions, and 1937-39, two years of being flooded by cases and settling disputed points under the law. In response to the criticism that the Act was one-sided, the Board said that the Act could be made impartial by forbidding unions to interfere with the organization of employers, but that it would be idle to do so; no use had been made of that provision in the Railway Labor Act. It also said that law in general had been too much in favor of employers and that the N.L.R.A. merely redressed the balance.¹⁰⁴ This last question is one on which Chapters 27-30 have given much evidence, yet with all that evidence it is not possible to say just how far out of balance the scales were or are. People's opinion about that point must flow largely from their attitude toward the more equal distribution of income and the other probable results of encouraging unions.

State amendments. The criticism of unions and strikes in general and of the federal and state labor boards in particular led Pennsylvania and Wisconsin in 1939 to replace their acts with quite different ones and led to the passage of a new sort of labor relations law by Minnesota and Michigan which was to a large extent modeled on the Colorado compulsory investigation act. In Wisconsin and Pennsylvania there were new administrations

¹⁰² Douglas, *op. cit.*, p. 760. In fact, compulsory arbitration, of which little had been heard since the postwar peak of unionism and the Kansas experiment, was in 1937 again proposed as a way of handling the labor crisis and of offsetting the prounionism of the N.L.R.A.

¹⁰³ U. S. Department of Labor, *Report of the Commission on Industrial Relations in Great Britain*. Government Printing Office. Washington, D. C. 1938; U. S. Department of Labor, *Report of the Commission on Industrial Relations in Sweden*. Government Printing Office. Washington, D. C. 1938. These are summarized in *Monthly Labor Review* (October 1938), Vol. 47, No. 4, pp. 715-27; cf. *ibid.* (July 1938), Vol. 47, No. 1, pp. 39-51.

¹⁰⁴ N.L.R.B., *Report to Senate Committee*, April, 1939, pp. 6, 7, 10-11.

which would have interpreted the old laws differently, but there was also new legislation. We may analyze its provisions as we did those of the 1937 laws:

1. *Aid to unions.* The Wisconsin law makes it an unfair practice to violate an agreement. This would be useful to unions on some occasions. The new Minnesota and Michigan laws have rudimentary bans on unfair company practices; they forbid discrimination, but only the new Michigan rules forbid supporting a company union. The Minnesota law sets up no board; aggrieved persons may seek court injunctions.

2. *Advantages to companies.* Companies are handled more gently by the new Pennsylvania and Wisconsin laws. (a) In Wisconsin they are permitted to help a favored union if the services they give do not cost anything. (b) In both states the board may not, apparently, refuse an election petition from a dominated union. (c) The Wisconsin courts have power to review certifications without waiting for a final board order. (d) In Wisconsin strikers do not remain employees who may claim to vote in an election or to be reinstated without discrimination, unless the strike is one over recognition. (e) The Wisconsin law calls a closed-shop agreement an "all-union agreement" and considers it nondiscriminatory only if three-quarters of the employees have voted for it in a secret ballot. Both states consider the agreement discriminatory if the union is a closed one. (f) Both permit the checkoff only if the employee has authorized it in writing. In Pennsylvania a majority must have voted for it by secret ballot.

3. *Advantages to the A.F.L.* The A.F.L. craft unions gained a point in the new Wisconsin law. It makes the employer unit the norm, but permits any plant or craft to decide by secret ballot whether or not it wants to be a separate unit.

4. *Internal affairs of unions.* (See the second paragraph above as to the closed union and the last as to strike votes.)

5. *Mediation.* The Minnesota law creates the office of Labor Conciliator.

6. *Strike.* Strike and organizing activities were further limited by each of the four laws, as they had been by the 1938 Oregon strike law. (a) Violence was forbidden. (Cf. Chapter 27.) (i) Pennsylvania and Minnesota forbade sit-downs and Wisconsin forbade mass picketing. (ii) Pennsylvania, Minnesota, and Michigan forbade intimidation of workers; Wisconsin and Pennsylvania, intimidation or coercion of employers. (b) Various union projects were forbidden. (Cf. Chapter 28.) (i) Wisconsin forbade companies to bargain with minority unions and forbade picketing, and so on, in strikes which have not been approved by a majority of the employees in the bargaining unit. (ii) Wisconsin and Minnesota forbade strikes in violation of an

agreement. (iii) Boycotts were forbidden by Wisconsin and were limited by two Minnesota rules—that nonemployees are not to picket unless the majority of the pickets are employees, and that only one picket is allowed where no strike is in progress. (c) The main provision of the Minnesota and Michigan laws was notice and “cooling off” before striking. (See Chapter 30.)

Proposals to amend N.L.R.A. The antiunion bills before Congress in 1939 had much in common with these new state laws; while some were confined to reducing the duties of employers under the N.L.R.A. (Point 2) and to putting the A.F.L. into a more advantageous position in its competition with the C.I.O. (Point 3), others, as we have seen, were meant to hamper unions (Point 6).

Of the bills to amend the Act, the most prominent was that of the A.F.L. (Senator Walsh's S.1000), since it was thought that criticisms of the Board from organized labor itself deserved special attention. Defenders of the N.L.R.A. deplored the Federation's attack on the Board because it helped employers to break down an institution that was useful to both A.F.L. and C.I.O. unions and because it might lead to new restrictions on unions. The Board officially replied to the A.F.L. attack by publishing figures to show that A.F.L. and C.I.O. cases had been disposed of in almost the same ways, and in about the same length of time.¹⁰⁵

Though both the Senate's labor committee and that of the House held hearings on the proposed amendments in 1939, they took no action. As a result, the Republicans and the conservative Democrats in the House voted a special committee of investigation. Representative Howard Smith of Virginia, who had sponsored the inquiry, became the chairman. The hearings which were held in December, 1939, and in early 1940 chiefly played up what evidence the committee could find that the Board's employees were prejudiced in favor of the C.I.O. It was definitely established that Board officials wrote to each other frankly and never destroyed any correspondence.

The Committee's majority of three made a preliminary report in March, 1940, in the form of proposed amendments. The two New Deal members dissented and the Roosevelt Administration proposed as an alternative that two members be added to the Board, apparently with the idea that the creation of a conservative majority of three on the Board would satisfy critics since the new rulings would tend to be conservative. In the following review of the chief proposals for change in the N.L.R.A. (relating to Points 2 and 3, above), the Smith Committee's recommendations are given most space. This review will follow the same order as that used earlier in this chapter in describing the elements of the Act.

¹⁰⁵ N.L.R.B., *Report to Senate Committee*, April, 1939, pp. 27-31.

Discrimination. The Smith Committee proposed to restrict orders for back pay to a maximum period of six months. This rule was in contrast to some of the Board's orders made in cases which had been litigated over several years. If the Board and the courts were to dispose of cases very quickly, such a rule might subtract little from the Board's powers. A related rule is found in the 1939 Pennsylvania law, under which back-pay orders may not go back further than six weeks before the complaint was made to the board.

The Smith plan, like most of the amending bills, aimed to limit the Board in respect to discrimination charges (and other matters) chiefly by making changes in procedure (below).

Interference. Aimed at the Board's rule against antiunion statements by employers which seemed to be aimed to frighten employees away from unions, one Smith proposal undertook to legitimize employer statements about "any matter which may be of interest to employees or the general public," if not accompanied by threat of discrimination. This proposed rule was in consonance with the Board's practice, but seemed to put more burden of proof on the Board. It was a proposal that had been in the A.F.L. bill, perhaps because employers' advice had often been that their men ought to prefer the A.F.L. to the C.I.O.

Favored unions. The Smith bill did not deal directly with favoritism to unions, except that, like some other bills, it undertook to codify the Board ruling that after one election another could not be held for one year. If, after the election, the men join another union, and if the company prefers the former union, such a rule, inflexibly applied, might help the company to favor the former one, somewhat as the Circuit Court of Appeals favored the A.F.L. in the *M and M Wood Working Case* (note 39, above).

The A.F.L. bill had proposed to alter a practice of the Board, namely the practice of ordering the company to disregard an agreement with a union if disregarding it seemed necessary in order to offset favoritism to that union and to make possible a new election; the Board was to be permitted to override agreements with dominated unions but not with outside unions. This principle is found in the Wisconsin 1937 and 1939 laws. The Smith Committee did not touch on this point.

Strikers' reinstatement. The Smith bill undertook to extend the Fansteel decision by taking away from a person the right to ask for reinstatement after a strike (or in any reinstatement case) when the weight of evidence showed that that person had used any violence in connection with a strike or with organizing. The Board's practice had been to penalize in this way only serious offenses and after court conviction.

Duty to bargain. The Chamber of Commerce of the United States had proposed to abolish the right of a majority union to be the exclusive bargaining agency. This was to be accomplished by having each union speak only for its own members. (Such a plan would eliminate the need for elections.) However, the Smith Committee stopped a little short of this scheme. It proposed first that the company be under no legal obligation to bargain, if each of two unions claimed to have a majority, until an election had been held. It also proposed that an employer be not required to submit counterproposals if he rejected the union's proposals in bargaining. This made the employer's legal duty to bargain about equivalent to the moral duty to listen politely to a governmental mediator. Of course in a sense the imposition of a legal duty to bargain cannot create a real acceptance of collective bargaining.

A third Smith proposal in this connection was that neither side be required to reach an agreement. This suggestion reflected the law as the Board had interpreted it, except that such a clause might be interpreted as canceling the Board's rule that the employer must at least agree to a contract embodying his plant's existing practices or the rule that the employer must put into writing anything he agrees on with the union.

Elections. The Act read as though employers had power to ask for the holding of elections, and since 1939 the Board had interpreted it this way (after the A.F.L. joined with employers to demand the change). The Smith Committee proposed to write this rule into the law, at least for cases in which two or more unions were competing for recognition and in which the employer was willing to state that he dominated neither of the unions and that he intended to bargain collectively.

The Committee also proposed that when a union petitioned for an election it be required to affirm that it represented 20 per cent of the men and that it was not a company-dominated union.

Apparently, in these situations, the Board would be obligated to hold an election whenever a company or a union petitioned, and all charges of domination would be disregarded if the petitioner denied them.

Though the A.F.L. had sometimes asked for a plant election-unit when the C.I.O. wanted a craft unit, more often it had been the other way round. The A.F.L. urged, therefore, that the law require craft or departmental elections. Employers favored this plan, apparently because it would divide bargaining within a plant among several unions hostile to each other. The Smith Committee favored it too. Specifically, it proposed that the Board be empowered to fix on a unit *no larger* than that contended for by any party; moreover, that the Board have no power to fix a unit until the two competing unions had agreed in writing on the appropriate unit. The latter suggestion seemed to be the same as that made in 1940 by former Board chairman L. K.

Garrison, who said in effect that the Board was caught between two fires of criticism, that of the A.F.L. and that of the C.I.O., and that it should be permitted simply to reject such cases.

Employers and the A.F.L. had also been opposed to the use of units larger than one plant, and the rules suggested just above would limit the Board in instituting employer (multiple-plant) and association (multiple-employer) units.

The Committee also asked that the Board certify unions only if elections had been held. This recommendation merely codified the practice of the Board, which in 1939 gave up receiving other evidence, such as union records.

The Committee also adopted another practice of the Board—that no second election be held until at least a year had elapsed.

Though these amendments bearing on elections satisfied most of the A.F.L.'s demands, the committee also made the (procedural) proposal that the courts be permitted to review the Board's decisions about units and elections. The Board and the Supreme Court had stated that under the Act these decisions were reviewable only if, after the election, a company refused to bargain, or the like.

Procedure and enforcement. The most important proposals for change made by the Smith Committee had to do with procedure. The chief criticisms made before the Committee began its investigation may be summarized as follows:

(1) The Board's members were accused of pronoun bias by employers and of pro-C.I.O. bias by the A.F.L. A number of the amendments which have been mentioned were intended to take away Board discretion and make any bias less important. Besides that, the A.F.L. bill laid down qualifications for trial examiners and proposed that the objection of either party to an examiner was sufficient reason for his replacement.¹⁰⁶ Other bills proposed that the present Board be replaced by another, perhaps a five-man board, with employer and union representatives on it.¹⁰⁷

(2) Another way of limiting the Board's discretion and its possible bias was embodied in the proposal that examiners admit only evidence of the sort admitted at jury trials. The A.F.L. did not endorse this suggestion. The Board's position was that, though a jury might be prejudiced by hearing hearsay evidence, its examiners were skilled enough not to be.

(3) In order to end what was called undue delay the A.F.L. bill laid

¹⁰⁶ A Board decision was set aside because the court found bias on the part of the examiner. *Montgomery Ward Case*, C.C.A.-8, April 3, 1939. Cf. *Inland Steel Case*, C.C.A.-7, January 9, 1940.

¹⁰⁷ W. Leiserson, who had been executive secretary of the N.L.B. in 1933, testified that the bipartisan character of that Board led to continual attempts to compromise cases rather than to enforce the law. U.S., Senate, Committee on Education and Labor, Hearings on S.1958 (74th Congress, 1st session), p. 886. Cf. pp. 50-51, 59-60, 86-7, 869-70.

down in great detail the maximum time allowed the Board in which to carry through various steps. An opposite but related complaint was to the effect that the Board did not allow companies enough time to prepare for hearings. The Act specified at least five days between the formal complaint and the hearing in unfair practice cases. In about three-quarters of the cases the interval had been over ten days;¹⁰⁸ and in June, 1939, the Board announced a ten-day minimum.

(4) Critics stated that the Board's alleged bias was either traceable to or made more harmful by the nature of modern administrative tribunals, which are "prosecutor, judge, and jury in one." The Board's chief defenses were that the plan had worked well in older administrative tribunals like the Interstate Commerce Commission and that it maintained a prosecuting staff separate from its examining staff. A general defense of administrative tribunals is that they make better decisions than courts because they are specialized and expert. (Cf. Point 2, above.) Sometimes such tribunals are defended on the ground that they are usually less conservative than the courts. Despite all these defenses, various bills proposed to turn prosecution over to a separate agency supervised by the Department of Justice. The same general result was aimed at by proposals to transfer more of the Board's functions to the courts, thus tending to turn the Board into a specialized prosecuting agency.

(5) In fact, most critics were inclined to call for more and earlier activity by judges. A center of attack was the clause (often found in laws creating administrative tribunals) that the courts were to accept the Board's findings of fact if they were supported by evidence. The proposal to amend the clause lost much of its point when it turned out that the courts without any amendment interpreted the clause to mean "supported by substantial evidence." The A.F.L. was anxious to be able to get court review of certifications and to have courts command the Board to take cases which it had rejected. To the latter end the Federation proposed that when the Board refused to proceed it should issue an order of denial, reviewable in the circuit courts, and that district courts be allowed to order the Board "to perform its functions."

Let us turn back to the Smith Committee. One of its main proposals was that the Board use court rules of evidence, as far as practicable (see Point 2). The 1939 Pennsylvania law had adopted this rule; the 1939 Wisconsin law had been even stricter, omitting "practicable." A related Smith recommendation, implying little change from Board practice, was that decisions be based on the "preponderance of evidence."

Speed was encouraged by two recommendations, one that unions would have to complain of unfair labor practices within six months after their occur-

¹⁰⁸ N.L.R.B., *Report to Senate Committee*, April, 1930, pp. 337-38.

rence, and the other that, if the complaint was officially accepted, the Board would have to announce within fifteen days the time and place of the hearing to be held before its trial examiner (see Point 3).

The Board could order no affirmative action which had not been specified in the complaint. It was to issue subpoenas at the request of any party to a case.

The Committee took the position that the Board's attempts to keep separate its prosecuting staff and its judicial staff were not enough (see Point 4). It proposed to appoint an Administrator to have charge of receiving complaints, of deciding whether to prosecute, of appointing attorneys to prosecute, and of prosecuting. The Board would thus become a specialized labor court, with subcourts, as now, in the form of trial examiners. As before, its decisions would be enforced only if the Circuit Court agreed; the Administrator would seek such enforcement on his own initiative or at the request of the Board. The Board would conduct the employee elections.

The Administrator's term was to be indefinite, presumably terminable by the President. The Board members' terms were to continue to be for five years but they could not be reappointed. The President could appoint the old members to the new Board, but no more than two of the three were to belong to the same political party.

The various new rules would probably open up a number of ways in which the courts could limit the Board when orders came up for enforcement (see Point 5). In addition, the Committee proposed that the Board's findings of fact be not conclusive on the courts if the courts found them to be "clearly erroneous" or "not supported by substantial evidence." This seemed to differ little from existing practice.

Other proposals were to eliminate from the preamble of the Act language recognizing collective bargaining as "public policy," and to exempt firms which pack, can, or process agricultural products.¹⁰⁹

Strikes and the Board. People's attitudes toward these proposals, as well as toward other union problems, were and are determined to a large extent by their basic notion of the desirability of collective bargaining and of a governmental agency to help struggling unions. If they approve of these, they may say that some additional strikes are simply the price of freedom to bargain collectively; or they may predict that settled methods of collective bargaining will finally lead to industrial peace.

The Board's basic justification of itself and of the Act was that it had reduced strikes. It pointed out that it had increased civil liberties—freedom to talk about and join unions. Many people had joined—some of them because

¹⁰⁹ Section 13 of the N.L.R.A. (which said that the Act was not to be construed to forbid any strikes) was not mentioned in the Smith bill; the Committee apparently meant to abolish it.

of the new freedom. Many new agreements were signed between companies and unions—partly because the Act required recognition and negotiation. All this might have been accompanied by more rather than fewer strikes, and in fact there were more in 1936 than in 1935 and more in 1937 than in 1936. But the Board points out that the Act of 1935 did not really go into effect till the Supreme Court decisions of April, 1937, and that strikes declined in 1938 over 1937. Although this is traceable partly to the decline of business, the Board calculates that, whereas man-days lost because of strikes fell 51 per cent in industries not (or partially) under the Board's jurisdiction, in industries under the Board they fell 71 per cent. The 20-point difference the Board translated into a saving of 4,780,000 man-days or \$33,000,000, at \$3.50 a day per worker and as much again saved per day by employers and communities.¹¹⁰

The Board seems to base these claims on the fact that in recent years about half of all strikes have been for "organization" reasons,¹¹¹ which, rather than hours and wages, are the subjects which the Board is authorized to adjudicate. But it has been pointed out that, of organization questions, the Board has in its charge only recognition and discrimination, and that not 50 per cent but about 8 per cent are strikes for recognition and discrimination, and for no other reason.¹¹² Hence the Board will either have to attribute the decline in strikes to some other force or will have to assume that its pacific example has influenced strikes called for all sorts of reasons.¹¹³ The Board pointed with pride to the vast increase in the number of cases brought to it, after April, 1937, at a time when the strike-curve was about to go down, and submitted this fact as evidence that it caused the drop in strikes;¹¹⁴ but presumably most of these were cases which would never have led to a strike.

SUPPLEMENTARY READINGS

(See also "General Readings" at the end of Chapter 27.)

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¹¹⁰ N.L.R.B. (Division of Economic Research), *Research Memorandum No. 7*. Mimeographed N.L.R.B. Washington, D. C. 1939. P. 3.

¹¹¹ N.L.R.B., *Report to Senate Committee*, April 1939, pp. 18 and 323.

¹¹² Brooks, *op. cit.*, p. 130.

¹¹³ *Ibid.*, pp. 118-19. Brooks lists four ways in which the Board might decrease strikes. (1) The existence of the Board should eliminate strikes for recognition and the like. (2) By encouraging collective bargaining the Act would create ways for disposing of grievances, the accumulation of which accounts for many strikes. (3) Nation-wide unions might standardize conditions and eliminate substandard shops and their strikes of desperation. (4) More equal distribution of income might reduce one source of general dissatisfaction with the economic system.

¹¹⁴ N.L.R.B., *Report to Senate Committee*, April, 1939, p. 20.

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QUESTIONS

1. Why is discrimination important? Would you say that the chief function of the National Labor Relations Act is to prevent it?
2. In what ways, other than creating fear of discrimination, may an employer "interfere" with "self-organization"?
3. How close does the National Labor Relations Act come to giving employees "tenure of office"? How close does the National Labor Relations Board come to it? Do they create "seniority rights"?

4. Management resents reinstatement and sometimes proposes severance compensation as a substitute. Why does it? Would the substitution change the functions of the National Labor Relations Act substantially? Of the National Labor Relations Board?
5. Does the National Labor Relations Act increase the likelihood that unsuccessful strikers will be taken back?
6. Does "domination" interfere with "self-organization" in a way different from "favoritism"?
7. Can law force either a union or a company to bargain with the other? If it tries, will it not make one of them less willing to bargain?
8. Why are collective-bargaining elections necessary?
9. Why is there disagreement over the voting unit? Over what is a majority? Over whether the majority should speak for the minority?
10. What judicial processes are involved in the handling of collective bargaining problems by the N.L.R.A. and N.L.R.B.? What criticisms have been made of Board procedure?
11. Are critics of the National Labor Relations Act usually anxious to *reform* the Act or *abolish* it?
12. How were the state labor relations laws reformed?
13. Does the National Labor Relations Act seem to be the forerunner of extensive governmental prescription of terms of employment?

CHILD LABOR, WAGE, 32 . . . AND HOUR LAWS

STATE AND FEDERAL CHILD LABOR LAWS.

GOVERNMENTAL regulation of the work and education of children has a number of functions, including (1) preventing the impairment of the child's health and constitution; (2) preventing accidents to child workers; (3) keeping children away from environments that would encourage sex looseness or crime; (4) providing them general education and vocational training; (5) making more jobs available for adults; and (6) protecting the wages and hours standards of adult workers.

The government has a general guardianship over public health, including the problem of work-injuries, as we shall see. Many jobs, especially under modern factory conditions, can lower a child's resistance to disease temporarily or permanently. If he is working at a hazardous occupation, he is more likely to have an accident than are other employees, since he is less skilled. Moreover, during adolescence, when many children are working, moral ideas are at a formative stage. Night work and the street trades are thought to have an immoral influence on children; the former is regulated in many states but the street trades are not. It is during these years that the child needs the background that education can give him. If he does not have the chance to go to school, it is not likely that, as an adult, he will make the sacrifices necessary to complete his education. An examination of the advantages of an American education are beyond the scope of this chapter, although we may note that literacy influences both democracy and productivity and that there is today a tendency to train children directly for industry in public

vocational schools. While this education benefits the children as well as their potential employers, it entails a disadvantage to those already working at the trade, for it tends to depress the price of their skill.

The working father may need money so badly for his family that he prefers to have his children work instead of going to school, but adult workers in general find themselves faced with less competition when child labor is limited. Limiting it reduces adult unemployment and in the end raises wages and lowers hours. Moreover, the regulation of child labor sometimes takes the form of regulating hours and, less often, wages; these regulations may influence the hours and wages of adult workers. The early movement for limiting children's hours and forbidding children under a certain age to work was inspired partly by interest in education and partly by the hope of adult workers that the regulating agency would later cut *their* hours. The emphasis on health came later.¹

State legislation. The two general methods of regulation—forbidding gainful employment below a certain age and requiring schooling up to a certain grade—reinforce each other. So do the schooling rule and the rule, found in over half of the states, that no working papers will be granted unless the child is physically fit. While this rule does not usually imply a judgment as to the child's fitness for a particular job, some check is often imposed in respect to particular jobs by setting a higher age minimum for physically hazardous occupations, usually sixteen years; and sometimes an eighteen-year minimum for very hazardous ones, for night messenger service, or for other "morally dangerous" work.

At the beginning of 1938 there were forty-nine laws regulating child labor (counting the District of Columbia as a state). The laws are almost as diverse as they are numerous. One of the few elements of uniformity is that agriculture and domestic service are regularly excepted. The standards referred to in the following discussion are those of the International Association of Governmental Labor Officials (United States and Canada), which in 1935 drew up a set of rules which they considered the minimum.

Minimum age and schooling. It is usual for a state to set three minimums:

1. A low minimum age for work outside school hours.
2. Minimum ages for work during school hours.
 - a. Ordinary minimum, assuming that the child has finished the eighth grade (a lower grade is sometimes specified).
 - b. Higher minimum, after which the child can work even if he has not completed that grade.

¹ J. R. Commons and J. B. Andrews, *Principles of Labor Legislation*. Harper & Brothers, New York, 1936. P. 97.

The I.A.G.L.O. standard is sixteen years as the ordinary minimum and fourteen as the low one. In ten states the ordinary is sixteen, in four it is fifteen, and in thirty-four it is fourteen. Wyoming has none, and a number of the laws contain exceptions. In general, the states with sixteen- and fifteen-year ordinary minimums do not set higher minimums for slower children, but most of the other thirty-four states do, though four allow a child to leave school at fourteen regardless of his grade.

Hours and night work. The I.A.G.L.O. hour standard is an eight-hour day for a child under eighteen years old. Eight states use it, thirty-five have the eight-hour day under sixteen or fifteen or fourteen, and the other six allow nine, ten, or eleven hours daily and fifty-one to sixty hours weekly. The standard week is forty hours for a child under eighteen years. Of forty-three states with an eight-hour rule, three require the forty-hour week under sixteen, six the forty-four hour week (two under eighteen), and twenty-five the forty-eight-hour week. The other nine of the forty-three have the forty-eight-hour week but cannot be classed with these twenty-five because their hours rules exclude occupations like work in stores or do not apply to an age as high as sixteen years.

Sixteen states forbid children under sixteen to work after 6 P.M. (three of them limit the rule to a few occupations), twenty-three forbid it after 7 P.M. (five of them limiting it to a few occupations), and ten permit it till 8 P.M., or later, or do not have any restriction. Only eight states prohibit work during as many as eight night hours for children as old as sixteen and seventeen, even though as early as 1919 the International Labor Conference, meeting in Washington, recommended that all work at night be forbidden for children under sixteen and most night work at ages sixteen and seventeen. The I.A.G.L.O. standard is a prohibition of work during thirteen night hours for children under sixteen (ten states have this), and a prohibition of work during eight night hours for children under eighteen (two of the ten have this, and so have six other states).

Safety and health. Twenty-eight states require a certificate of physical fitness before working, nine states permit the officer issuing a work-permit to require it, and twelve ignore the matter.

Most states have a rather full list of occupations prohibited as dangerous to children under sixteen (though ten have no prohibition or practically none). Some have shorter lists for children of sixteen and seventeen (though thirty-one have none or practically none). Fourteen legislatures have now empowered their state labor or health departments to extend their lists. The I.A.G.L.O. standard would apply the whole list to children under eighteen.

Fifteen states allow minors to collect extra workmen's accident com-

pensation if they are hurt while employed in violation of the laws listed above. Three states provide for taking extra money from the company, but pay it into a general accident fund instead of to the injured minor. These rules indirectly enforce the age laws. However, nineteen states merely charge the compensation usual to the type of injury (occasionally enlarged by the longer prospective earning life of the injured worker), and ten states positively exclude from compensation minors injured while illegally employed. Newsboys rarely receive compensation for accidents, since the newspapers avoid "employing" them and instead "sell" them their papers. Agriculture and domestic service are exempt from compensation too.

Street trades. Twenty-one states regulate the employment of children in such street trades as paper-selling, and some cities have ordinances, but thirty-seven states permit boys under twelve in street trades and twenty-nine permit girls under twelve. The newspapers and their national association have fought against regulating the age of newsboys and often escape regulation here, too, because they "sell" to them. A Hearst circulation manager (whose two papers employed four hundred boys under ten) stated that paper-selling keeps out of mischief the boys of ten to fourteen.²

Irregularity. There is great variety not only among the provisions of the child labor statutes, but also in the relative strictness of their enforcement. Enforcement is usually in the hands of the factory inspection bureau, which is never even adequate to cover all its other duties. Some states have virtually no inspection, and so the laws are not enforced. In some states working papers are issued by special investigators, in others by school officials to whom it is a sideline. Where physical examinations are required, they may or may not be thorough. The education laws only partly reinforce the others unless local truant officers have the power and the duty to inspect places where children are likely to work. Prosecution may be in the hands of local or of state officials; the latter, of course, are less subject to local pressures. Judges and juries, too, when prosecutors bring cases before them, vary considerably in their estimate of the need for strict enforcement.

Federal legislation. A basic reason for the irregularity or variety of state laws and enforcement is the anxiety of businessmen and officials in one state to retain a labor-cost advantage (real or imaginary) over competing states. Legislatures compete to retain factories or to attract new ones, and they therefore compete to have weak labor laws, including those affecting child labor. In the states which are less anxious than others and can better afford the

² He is quoted in National Child Labor Committee, *Child Labor Facts*, 1938. National Child Labor Committee. New York. 1938. P. 23.

luxury of humanity, humanitarian sentiment is likely to be stronger and to have found legislative expression. These states have led the others in making the rules stricter, but they have always been hindered by the backwardness of states who are competing to attract new industries. It was because of this competition that a federal child labor law was needed to supplement state legislation.

Early laws. Federal intervention was in fact attempted under two statutes more than twenty years ago. After this experiment the head of the Federal Children's Bureau testified that state inspectors, co-operating willingly with the federal officials, found their work made much easier by the existence of federal standards. The first attempt at federal regulation was made in 1916 by a law which forbade interstate shipment of goods made in factories in which children of fourteen had been employed (age sixteen for mines and quarries), or in which children between fourteen and sixteen had worked more than eight hours a day, or six days a week, or at night. This law would have strengthened the rules in about three-fourths of the states if it had continued in existence.

The Supreme Court held this Act unconstitutional, on the ground that Congress's power over interstate commerce did not extend to the regulation of child labor.³ The next device, which was tried in 1919, was the laying of a 10 per cent tax on the net profits of companies not living up to the child labor rules. This, too, was voided in 1922, the Court justifying its previous tolerance of regulatory taxes on the ground that on their face they had been taxes for revenue.⁴ If the court had permitted either of the two laws, its decision might well have encouraged Congress to take over still more regulation from the states.

Proposed amendment. In 1924 Congress passed a Constitutional Amendment, but it was ratified by only six states, up to 1933. In 1933-35 the N.R.A., which is discussed below, established as a nearly general rule the prohibition of work for children below sixteen years (though the Act had not specifically mentioned child labor). A sample taken in 1934 (a year of fair business) showed only 10 per cent as many work-permits issued as in 1929 (a year of good business). The country seemed to be united behind the movement, and this sentiment led twenty-two more states to ratify during the five years from 1933 to 1937. Though a Gallup poll in the spring of 1937 showed a majority in every state and three out of four Americans in favor of the proposed Amendment, this did not produce the eight ratifications that were still needed at the end of the year.

³ *Hammer v. Dagenhart* (1918) 247 U.S. 251. The constitutionality of state child labor laws had rarely been challenged; the courts took the view that children are the wards of the state.

⁴ *Bailey v. Drexel Furniture Company* (1922) 259 U.S. 20.

In May, 1935, the Supreme Court had voided the N.R.A. and with it the Act's child labor rules. During the rest of 1935 the number of children under sixteen leaving school to go to work was 55 per cent above the number for the whole of 1934. This situation turned attention even more definitely to the Amendment, but it had much opposition and made little progress. One element of opposition was the South, but there were others who combined a suspicion of government interference with a devotion to states' rights. The South could attract Northern industry as long as it had low rents, taxes, and wages, and as long as its labor legislation standards and child labor laws were relatively lax. Another opponent was the Catholic Church, which apparently feared that Catholic children would be drawn away from church influence, perhaps by federal legislation against Catholic schools, even though the Supreme Court had held unconstitutional state legislation against private schools. Farmers were outspoken opponents, for they feared that the Amendment would forbid their having their children help on the farm.

The farmers had the least reason to fear the proposed Amendment. Their political power and the difficulties of enforcement outside the factory have always influenced legislatures to exempt child labor on the farm. Under the Amendment, Congress would probably not have been concerned with farm child labor except in situations like the sugar-beet fields, to which the A.A.A. had previously tried to apply federal regulation. As to the other two groups, the Catholic Church is able to influence local government in many American cities but it might well find federal regulations less amenable to pressure. The South, of course, would be the most affected.

While the proponents of the Amendment asked pity for "children who toil," the opponents played up the fact that the amendment spoke of *prohibiting* the labor of children under *eighteen*. Presumably Congress, like the state legislatures, would have prohibited it only in extremely hazardous occupations, but the impression was created that the Amendment automatically forbade it. There was also a good deal of loose talk about the Amendment breaking down the authority of parents and so undermining home and family. The opposition was politically well organized; a crucial defeat for the Amendment was in the New York legislature, where the strength of the pressure on the legislators is suggested by the fact that a number of members who voted for it were defeated in the following election in 1937. On the other hand the Supreme Court in 1939 ruled that the Amendment had not expired, despite the long delay, and that a state which had voted it down could change its mind.⁵

The I.L.O. In 1935 the United States joined the International Labor Organization (I.L.O.) which it had helped to found in 1919, when the

⁵ *Coleman Case* (1939) 59 Sup. Ct. 973; *Wise Case* (1939) 59 Sup. Ct. 992.

Organization's first Conference was held in Washington. At that meeting one of the conventions adopted said that no child under fourteen might work in industry; later conventions forbade other occupations. Half the member countries ratified the first convention. It was suggested that if the United States Senate were to do so, the Constitution would make it "the supreme law of the land." The Supreme Court might hold that this device was another subterfuge for throwing all sorts of legislation into the hands of Congress, but the device would, as a matter of fact, limit Congress to setting such *minimum* standards as the Conferences choose to adopt. Thus, if the United States ratified the first treaty, it would tighten the rules in relatively few states.⁶

New laws. The Social Security Act altered the child labor situation somewhat. Since 1912 there has been a federal Children's Bureau which studies problems of the health and welfare of the more than 43,000,000 children in the United States who are today under eighteen. In 1935 the Social Security Act gave the Bureau jurisdiction over granting money to aid the states in setting up child services concerned with: (1) the promotion of the health of mothers and children, especially in rural and distressed areas; (2) the care and rehabilitation of crippled children; and (3) rural welfare services for children neglected or likely to become delinquent. The Act also directs the Social Security Board to reimburse states to the extent of one-half of what they spend on mothers' pensions or "aid to dependent children." If the state grants more than eighteen dollars a month for the first child or twelve dollars for other children, the extra amounts have to be borne by the state alone. These pensions operate to keep mother or children or both out of industrial occupations, and thus buoy up wage rates.

Congress in 1936 and 1937 extended federal regulation of child labor. The Walsh-Healey Act required any company receiving a contract of \$10,000 or more from the federal government to observe wage and hour conditions and to swear that no boy under sixteen and no girl under eighteen had worked on the goods. The Jones Sugar Act excluded from government subsidy any beet grower who utilized (not "employed") children under fourteen, except where the parents of the children own at least 40 per cent of the crop harvested.

Some opponents of child labor urged Congress to overlook the N.R.A. decision and to repass its original 1916 measure. This notion derived some support from the Supreme Court's 1937 decisions in the N.L.R.B. cases, which seemed to widen the interstate commerce power. Accordingly a child labor provision was inserted in the Fair Labor Standards (Wages and Hours)

⁶ Alice S. Cheyney, *International Labor Standards and American Legislation*. Geneva Research Information Committee. Geneva. 1931. P. 25.

Bill. This movement was countered by a compromise proposal, to have Congress instead merely assist each state to protect its internal market against companies in states with less stringent child labor laws. This notion, too, was given support by a Supreme Court decision—one which permitted Congress to help states keep out goods made in the prisons of other states.⁷ While such a plan promised to be extremely complicated to administer, unless no more than two or three model laws were passed by all the forty-eight states, yet proponents claimed that it would “virtually terminate child labor in this country immediately.”⁸

Congress, in passing the Fair Labor Standards Bill in June, 1938, did not accept the compromise but instead forbade shipments in interstate commerce (by makers or dealers) of goods made by establishments using child labor in violation of the federal standards.⁹ Punishment is a fine of not more than \$10,000 or, for a second offense, imprisonment of not more than six months. The law adopts the traditional plan of age certificates, which are accepted as proof that the young employee is employed legally if the certificate is issued by a state agency approved by the federal Children's Bureau, which has charge of the child labor part of the statute. The Bureau has power to inspect, though in practice it relies on the state bureaus and on the Wage and Hour Division of the Department of Labor to do this work. Subject to the control of the Attorney General, the Bureau may seek injunctions against recalcitrant employers. An injunction acts as a definite warning. Prosecutions of injunction violations are somewhat less formal than criminal prosecutions are.

What are the federal standards? In the field of manufacturing and mining, the new law forbids all child labor under the age of sixteen, and the labor of children of sixteen and seventeen too, if the Children's Bureau has declared the occupation to be “particularly hazardous for the employment of children . . . or detrimental to their health of well-being.”

Most farming comes under the new law, but if the employment of children is outside of school hours or within the family no restrictions are placed on it. The “family” rule means that the small American farmer is not likely to be affected. As to the large farmer, a California onion grower may hire a Mexican who will in turn legally hire his children, however young. The “family” rule also applies to other occupations except manufacturing and

⁷ *Kentucky Whip and Collar Company v. Illinois Central Railroad Co.* (1937) 57 Sup. Ct. 277.

⁸ *The New York Times*, editorial, December 27, 1937.

⁹ That is, establishments in or about which “oppressive child labor” has been used within thirty days prior to the removal of the goods. This rule makes it somewhat easier to show violations than does the rule which obtains as to wages and hours (below). In prosecuting an employer the Department of Justice must mention every apparent violation that it intends to use against him; it cannot prosecute a second time except for shipments made after the first prosecution began.

mining. Nonfamily employers in other occupations seem to be covered, yet most are not affected by the federal law, since they create services or other goods that are not shipped across state lines. State child labor laws may apply to them. Child actors are specifically exempted from the federal law.

Those farmers and those others who *are* affected by the federal law may employ children of fourteen and fifteen outside of manufacturing and mining, on condition that the Children's Bureau has found that schooling and health are safeguarded. For children of sixteen and seventeen the rule is the same as in manufacturing and mining—work is permitted unless it is particularly hazardous.¹⁰ In its findings relating to the hazardousness of jobs for ages sixteen and seventeen, the Children's Bureau has to be more formal than in its findings as to schooling and health for ages fourteen and fifteen; it has to issue an order rather than a simple regulation.

The power of the Children's Bureau to confine the work of children of fourteen and fifteen (in the occupations mentioned above) "to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being" is exercised in the usual ways, covering school attendance for the day and year, a certain grade to be completed, hours of work, night work, and physical conditions of work. The new law limits children's hours to forty by October, 1940, as it does those of adults, and also sets a minimum wage of 30 cents by October, 1939, as it does for adults. This minimum may be raised by industry committees, and it may be lowered during a learning period.

It has been estimated that only 25 per cent of working children will be reached by a federal law which is limited to interstate commerce, so that a Child Labor Amendment is needed to make the rules uniform in all industries in the United States.¹¹

The early work of the Children's Bureau in enforcing the Act was to a large extent an attempt to teach employers that they should get official age certificates when employing children. The first prosecutions showed—what early state laws had also shown—that it is hard to convict an employer when the law punishes only "willful" or knowing violations.¹²

The state and federal laws which limit children's hours are, of course, premised on the fact that their bargaining power alone cannot gain them terms which the employer is usually willing to grant only when he has to.

¹⁰ Even employment within a family is limited by this "hazardous occupations" rule between sixteen and eighteen. But, as the law stands, the family-employment exemption for ages under sixteen is so broad that it permits employment in "particularly hazardous" occupations.

¹¹ National Child Labor Committee, *op. cit.*, p. 13. The exemptions in the Fair Labor Standards Act bring the coverage down to 6 per cent. K. D. Lumpkin, "The Child Labor Provisions of the Fair Labor Standards Act," *Law and Contemporary Problems* (Summer, 1939), Vol. 6, No. 3, p. 401.

¹² U. S. Department of Labor, *Annual Report of the Secretary of Labor, 1938-39*. Government Printing Office. Washington, D. C. 1939.

The bargaining power involved is that of the family, which may consent to have its child work under the worst conditions because the total family income is low. The laws which try to keep children away from work are also an attempt to strike a better bargain for the child—a bargain not with an employer but with life. Part of this better bargain is the provision of a chance for schooling, which raises the individual's bargaining power in relation to industry in general.

STATE MAXIMUM HOUR LAWS

Besides the state maximum hours laws applying to children, there are also laws applying to women and a certain number applying to men. A related group of laws governs rest periods and night work.

Laws which include men fall into three groups: those applying to public employment; those occasioned by special dangers to the workers or to the public; and those applying to all occupations.

All these laws, of course, imply that employers are financially able to adopt shorter hours but that, without the law, the employees cannot force them to, either through individual bargaining or, where they have unions, through collective bargaining.

In the United States hour laws have usually been confined to women and children, whose health was especially likely to suffer from long hours and who were least likely to organize to increase their bargaining power, and to men in occupations where their health or the public safety was jeopardized by long work-hours. In contrast, the federal laws of 1933 and 1938 covered all workers, in an attempt to reduce unemployment.

Women's hours. As in the case of children, hour laws for women early received support from men workers who found that public sentiment was not yet prepared for laws covering men and thought to approach their aim gradually. There was active agitation by many of the women employees themselves. Most of their work was in textile mills, where hours were twelve or more per day when the agitation began a century ago. The first law, passed in New Hampshire in 1847, provided for a ten-hour day unless "an express contract" fixed a longer one. A movement was begun against the signing of such contracts, but those who refused to sign them were fired. In a few textile centers in other states strikes were called to back up the new laws, but they were only rarely successful.

In 1879 Massachusetts enacted the first enforcible ten-hour, six-day law, and other states gradually followed. By July 1, 1937, there were eighteen states with forty-eight-hour laws (one was forty-four), fourteen of them having an eight-hour daily limit. Two others had an eight-hour law with no weekly

limits. Five states had no limits. The rest usually had fifty-four-hour laws and either nine- or ten-hour daily limits. The Supreme Court had upheld a ten-hour law in 1908 and an eight-hour law in 1915.¹³ These cases were marked by the successful use of "sociological briefs" in support of the law; these briefs collected all available authorities on the bad effects of long hours on women's health. One of the most popular arguments for the laws was that the health of the coming generation depended on the health of working women, most of whom would become mothers.

The occupations to which these laws apply seem to be ones generally thought unhealthy. The early laws applied to manufacturing, and sometimes only to textiles; sixty years ago women were not yet sales clerks and office clerks. After new occupations for women developed, the laws were gradually extended to include clerks and laundry, hotel, restaurant, telephone, and other employees, since people came to realize that long hours in these fields, too, were injurious. But the coverages in different states vary widely. Employers in all fields resist regulation. Among employers it is manufacturers who have the strongest argument, namely, the existence of interstate competition; yet factory regulation, by coming first, got a head start on the regulation of other occupations.

Farm and domestic work have always been exempt, partly because these occupations are not thought of as unhealthy in the way that factory jobs are, but especially because their inclusion would antagonize many small employers in fields where long hours have been traditional. Enforcement against farmers and householders would be almost impossible if they were antagonistic toward the law. Similarly, small business establishments have sometimes been exempted, or establishments in small towns (which sometimes contain large establishments) even though the need for a legal limit is often just as great in the small shop as in the big. The canning industry has usually secured an exemption because it was close to farming and because it pleaded a short season in which it must preserve perishables by means of a limited supply of labor and equipment. Nevertheless, the industry is now more regulated than it was.

Legislatures occasionally fix different maximums for different industries, but recognition that some jobs are unhealthier than others exists chiefly in the small number of states which are entrusting discretion to their labor commissions. Some of these give them unlimited discretion; California and Oregon do not let the commission set hours longer than the basic standard. Kansas sets no basic standard at all, and its commission's orders fix hours ranging from forty-eight and eight to fifty-four and nine. Courts have held that it is not an excessive delegation of legislative authority to entrust these functions to a commission.

¹³ *Muller v. Oregon* (1908) 208 U.S. 412; *Miller v. Wilson* (1915) 236 U.S. 373.

There is flexibility of another sort, too. In some states the manager may be permitted to schedule a longer day if he allows time off on Saturday. He may be permitted to run longer than the standard day if he does it only occasionally and pays overtime. In most states he may lay workers off for some hours in the middle of a shift if materials are not at hand. The workers are then available over much more than eight hours, but they are not paid for the in-between hours.

In order to get the co-operation of workers in enforcement it is usual to require that the hour law, as well as other laws, be posted conspicuously. The management is sometimes required to fill in the normal beginning and quitting times. Thorough enforcement is impossible; at best it is much harder to catch an hour-law violation than a violation of the sanitation rules. It is somewhat easier to convict where it is lawful to work only during the normal hours posted, than where the inspector has to prove that a worker worked more than eight (or nine) hours.

It has sometimes been supposed that women lose their jobs to men when their hours are shortened and those of men are not. This idea has sometimes led unions made up of men workers to support legislation covering women only. Presumably they would lose them only in borderline cases, where men's services were almost as cheap as women's and where the law set hours considerably shorter than those on which the firm had been operating. Since hour laws merely enact the usual practice, only a few companies would be affected; moreover, the general coverage of laws that apply only to women is limited—these laws took in about a third of gainfully occupied women in 1936. A detailed study¹⁴ by the United States Women's Bureau in 1926 indicated that there was practically no displacement by men. Women were found to be employed as extensively in California as in Indiana, where the only restriction was on their night work. It may even be that hour laws, by shortening hours in some plants, have, by spreading employment, created more jobs for women than there were before.¹⁵

The N.R.A. fixed maximum hours at around forty for most industries employing women during 1933-35. It fixed the same hours for men employees—something nearly unprecedented in the United States. After the N.R.A. was held void, many state legislatures tightened their laws covering women's hours. In 1934 the Oregon commission moved as far down as a forty-four-hour week (with an eight-hour day). In 1937 the Pennsylvania legislature enacted this standard into law for men and women both. This was held unconstitutional by the state supreme court. We shall see that in 1938 in the

¹⁴ U. S. Department of Labor, *Summary, the Effects of Labor Legislation on the Employment Opportunities of Women*. Women's Bureau, Bulletin 68. Government Printing Office: Washington, D. C. 1928.

¹⁵ U. S. Department of Labor, *Women in the Economy of the U.S.A., A Summary Report*. Women's Bureau. Government Printing Office. Washington, D. C. 1937. P. 118.

Fair Labor Standards Act Congress enacted a forty-four-hour week which was later to drop to forty hours.

Public employment. Limiting hours for women both protects one class of workers and sets a standard, encouraging male workers to try to get hours as low as the women's if they do not yet have them. Limiting hours for workers employed directly or indirectly by the government also protects one class and sets a standard. Indirect employments include work on building contracts let by government agencies and work on the production of goods purchased by the government. If employees work part of the time on such government work, with limited hours, and perhaps higher pay, they may be given or demand the same conditions for the rest of their work. The majority of workers involved here are men.

In general government tends to employ people on terms similar to those of private employments. While some reforms originate with the executive branch, it is usually more anxious to make a good budget showing than it is to win the political support of the government employees and their friends. Thus broad reforms wait on legislative action.

The first notable reform in the federal field came from the executive when President Van Buren in 1840, after some years of agitation, introduced in the government navy yards the ten-hour day without a cut in daily pay. A federal act of 1868 prescribed an eight-hour day for manual work done for the government directly or through contractors, but it was not made effective by prohibiting overtime until 1892, and no real limit on "emergency work" was put in until 1912. Similar movements took place in the states, more than half of which have eight-hour laws, nearly all of which apply to contract work as well as to direct employment. Many cities have eight-hour clauses in their charters, or eight-hour ordinances. Policemen and firemen have usually been excepted, but their hours are gradually being shortened. Firemen are now typically on call only twelve hours, and in New York City and a few others only eight.

Organizations of policemen and firemen were often active in agitating for shorter hours; trade-unions, too, have always favored the shortening of hours in public employment as well as the awarding of contracts to union firms. Shorter hours and less overtime have been a motive behind the growing union movement in public employment during the 1930's. The post-office workers had been organized for some time before 1930 and had secured a number of concessions from Congress. All direct federal employees were given a forty-four-hour week in 1931, and in 1935 postal employees were cut to forty.

Hour reductions for public employees in the 1930's were presumably not so much political concessions as an attempt to spread work. In 1933 the

N.R.A. tried to reduce hours and spread work in industry in general, and sought to enlist the support of all consumers by asking them to buy only from "Blue Eagle" firms. Consumers and businessmen soon lost interest, and the federal government tried to carry on enforcement by itself through boycotting recalcitrant companies and requiring states which wanted federal aid during the hard times to boycott them too. After the N.R.A. was held void, Congress continued the boycott by means of the Walsh-Healey Act. No federal purchases were to be made of anything produced by employees working longer than forty hours a week or eight hours a day and receiving less than prevailing wage rates. This rule did not apply to purchases under \$10,000 and since firms began to make their bids on smaller lots a great many purchases were exempt. In some cases no bids at all were made, apparently because the various competitors had agreed to try to force exceptions from the Secretary of Labor, who had power to grant them.

Dangerous trades. Most of the laws limiting men's hours in particular trades have behind them the motive of conserving health and safety, though the employees concerned may think simply of the convenience of shorter hours and the possibility that weekly pay may not fall as much as hours do. These dangerous trades employ mostly men; in fact, in some of them women are forbidden to work.

The United States Supreme Court as early as 1898 accepted the notion that a legislature could shorten hours to eight per day in unhealthy occupations like mining and smelting; the following year, however, the Colorado Supreme Court made a contrary decision on the ground that *public* welfare was not involved, that only the employees are injured by long hours.¹⁶ In 1905 the federal Supreme Court, too, temporarily reversed its position when it voided a New York ten-hour law for bakers, either because it had repented or because the argument did not make clear that baking was less healthful than other trades. In general since that time similar laws have been upheld when health was clearly involved. In 1913 the Louisiana Supreme Court voided an act fixing the hours of stationary firemen at eight. The law exempted oil, cotton ginning, saw mills, and sugar plantations, presumably because of the political power of these employers, but the court could not see that firing in these occupations had fewer health hazards.¹⁷

The Colorado decision gives us a clue to the general practice of legislatures: when *public* safety—for instance, the safety of passengers and freight—is involved, legislators are much more likely to pass laws limiting hours than when it is merely a question of the safety or health of the employees.

¹⁶ *Holden v. Hardy* (1898) 169 U.S. 366; *In re Morgan* (1899) 26 Colo. 415. State courts are not bound by the United States Supreme Court decisions in such cases; they are at liberty to interpret the state constitution strictly.

¹⁷ *State v. Barba* (1913) 132 La. 768.

The first laws to be discussed, therefore, are those governing transportation. The rules here are of two main sorts: those setting normal hours and those setting outside limits to overtime. Shorter normal hours guard health and also prevent accidents that come when the employee is tired. Outside limits on emergency overtime were set after it was noticed that drivers of locomotives and trucks were apt to make fatal mistakes when wholly worn out. So were other employees who are connected with running trains and those who direct their movements. State laws governing the hours of these crucial railroad employees were passed, and were later largely superseded by federal laws. Congress in 1907 fixed outside limits of nine hours (at busy junctions) and of thirteen hours for men directing movements of trains. A longer maximum, sixteen hours, was set for men running trains, since it is hard to get a relief man onto a moving train when an emergency has lengthened the hours. Having done this, Congress might have left normal hours untouched if it had not been for the unions of the men running the trains. They had shortened hours by collective bargaining to some extent, but, still unable to get the railroad managements to agree to a basic eight-hour day, they threatened to strike in 1916 and refused to entrust the matter to arbitration. Congress promptly granted their demand through the Adamson Act. The Supreme Court, in upholding the law, spoke of Congress's undoubted right to establish compulsory arbitration for the railroads.¹⁸ The immediate effect of the law was to leave hours unchanged since the railroads paid for each eight hours of work the amount previously paid for ten; but runs were adjusted to give an actual eight-hour day fairly soon.

Government administration of the railroads, 1918-20, occasioned by the War, introduced the eight-hour day for many railroad employees other than engineers, firemen, conductors, and trainmen.

The various states have limited bus and truck drivers' hours and in 1935 Congress gave the Interstate Commerce Commission power to regulate their hours where interstate commerce was involved. On December 31, 1937, the I.C.C. set a sixty-hour week and twelve-hour day (to stretch over no more than fifteen hours) on for-hire vehicles. It announced that it had disregarded the argument of organized labor for a lower maximum because of the many small individual operators; that only eight states have as low a weekly maximum and only fourteen states a higher daily maximum; and that it set a limit only to promote safety, having no power to consider the unemployment situation. A dozen states have laws limiting street railway motormen and conductors to ten or twelve hours. Federal regulation appeared in this field only when it intervened in other local industry—through wartime arbitration,

¹⁸ *Wilson v. New* (1917) 243 U.S. 332. Just before the decision the impatient unionists wrested an agreement from the managers; the men's bargaining power was the greater because the country was on the point of going to war with Germany.

and fifteen years later through an N.R.A. code. The introduction of the one-man streetcar and bus has made the job harder and shorter hours more imperative. Federal laws in 1913 and 1915 limited the hours of officers and crew in the merchant marine and in 1936 provided an eight-hour day and gave the new Maritime Commission power to fix working conditions on subsidized lines.

Pennsylvania has an eight-hour law for hoisting engineers in anthracite mines only, and in some other coal- and metal-mining states general eight-hour mining laws cover these men on whom life and property depend. Most of the principal coal-mining states, however, do not have effective eight-hour laws of this sort. The likelihood of accident is probably a more prominent motive for passing mining laws than is the unhealthy nature of underground work, for mass accidents are spectacular. This may be assumed from the fact that the legislatures have neglected to provide shorter hours for work in deeper mines where heat, moisture, and lack of ventilation are worse than elsewhere. However, the serious effects of tunnel boring in compressed-air chambers (especially if the "sand hogs" are not returned to normal pressure slowly enough) have led eight states to set a six-hour day for high-pressure workers, with the provision that the higher the pressure, the longer the rest period within the six-hour day.

The hours of soft-coal miners were considerably influenced by the N.R.A., which, aided by the collective-bargaining power of the United Mine Workers, brought them down to seven hours a day and five days a week. After the N.R.A. was voided, Congress enacted a "little N.R.A." for soft coal which again undertook to apply the union contract to all coal mines. But this too was voided, the Supreme Court emphasizing Congress's lack of power over labor conditions.¹⁹ A revised Act was passed then which did not refer to labor but was expected to increase prices and profits enough to enable labor to claim a share. The union contracts in both soft and hard coal specify a thirty-five-hour week. In this field, as well as in child labor, it has been suggested that the federal government get direct control over labor matters by ratifying the I.L.O. convention which provides a seven-and-three-quarter-hour day for underground miners.

The Fair Labor Standards Act of 1938, in setting general hour rules, included mining and dangerous manufacturing trades along with nonhazardous ones, but did not include construction or transportation.

General hour laws. There is a scattering of state laws which limit the hours of male workers in trades other than transportation and mining and concerning which the legislatures may or may not have decided that they were unusually unhealthy. These trades include bakeries, laundries, plate

¹⁹ *Carter Case* (1936) 56 Sup. Ct. 855.

glass factories, brickyards, plaster and cement mills, and sugar refineries, but they also include drugstores and grocery stores in a few states.

In some cases single trades are named because when they are covered, the bulk of the state's industry is covered. We saw that the early laws limiting women's hours were usually textile laws. Maryland, South Carolina, and Georgia have laws covering men which apply to certain textiles. A general federal forty-hour rule was applied to all textile states by the N.R.A. codes. The difficulties of achieving the same situation by state legislation were suggested by the action of the South Carolina legislature after the codes were dropped. In 1936 it accepted the eight-hour day and forty-hour week rule for textiles, provided that both Georgia and North Carolina adopted the same regulations, which they declined to do. Similarly Oregon, which already had a general ten-hour law, in 1923 passed an eight-hour law for one of its major industries, sawmills and planing mills, conditional on its adoption by adjoining states.

General eight-hour laws were passed quite early, but like the early women's laws referred to above, they amounted to no more than exhortation. Nebraska's law of 1891, requiring double pay after the eighth hour, was held unconstitutional in 1894. In 1918 an Alaskan eight-hour law was voided by a federal circuit court a year after the Supreme Court had upheld²⁰ the Oregon ten-hour law for industry in general. A similar ten-hour Mississippi law was amended in 1924 by the addition of a limit of fifty-five hours a week. In 1931 a North Carolina eleven-hour law was amended in the opposite direction by restricting it to women.

This opposite trend was an effect of the depression, in which employers felt they could not afford to be humanitarian, but the depression in general had a quite different effect on hours laws. Four years of it brought about the N.R.A. and weekly hours of forty or thereabouts (below). Four years later, in 1937, North Carolina again limited men's hours—this time to fifty-five hours a week and ten hours a day—and reduced the maximums for women to forty-eight and nine hours. Pennsylvania, which had limited women to fifty-four and ten, changed to forty-four and eight and applied the same rule to men (as we saw earlier). Meanwhile, Montana, in November, 1936, had adopted by constitutional amendment the eight-hour day for all occupations except farming and stock raising, with a provision that the legislature might reduce but not increase this maximum.

In 1935-37 the United States worked for forty-hour conventions at the I.L.O. meetings in Geneva, where modified conventions were adopted for the textile and bottle industries. In 1938 Congress passed the Fair Labor Standards Act, described below, which embodied a modified forty-hour rule.

²⁰ *Bunting v. Oregon* (1917) 243 U.S. 426.

STATE MINIMUM WAGES FOR WOMEN

State minimum wage laws in the United States have regularly applied to women and children and not to men. Nearly half the states had experimented with them up to 1937 and until then they were generally considered unconstitutional. During 1933-35 their function reappeared in the N.R.A., and in 1938 the federal Fair Labor Standards Act. These are discussed below. The function of a minimum wage law is to set rates which will raise woman's wages somewhat closer to their worth to the employers. This action may give more income to an otherwise indigent person, but it does not give it as charity, the law being drawn up for the prevention, and not the relief, of destitution. Like all antidestitution laws, minimum wage laws serve to promote the health of the workers affected, but, like much labor legislation, they apply only during the days of employment and do not prevent the destitution of unemployment.

The decade 1913-23. Attacking "sweat shop" wages by means of minimum wage laws is a practice which traveled from Australasia (where it began in 1894) to Great Britain (1909), and thence to the United States. The tradition that legislation affecting women workers was more legitimate than legislation covering men had also come from Great Britain, but it continued to flourish in the United States long after it died in Great Britain. In the United States the courts especially were more likely to approve the first than the second. During the reform era great hopes for new methods were entertained, and a bill introduced in Wisconsin in 1911 included men. But the bills in other states covered only women and children, and the laws passed were of this sort.

If consulted, organized labor would have strongly opposed including men, for it preferred that workers rely on them for wage increases. This same feeling led to a general indifference among union leaders toward minimum wages for women, though some hoped that laws like this, making it more expensive to employ women, would lead to the replacement of women by men in many jobs. California passed a minimum wage law despite union opposition, but in Texas the minimum wage law was put through in 1919 after five years of union agitation in favor of it.

The fact that these laws, like many other labor laws, were confined to women and children later aroused the ire of the Women's Party, which supported "equal rights." This group denied that women needed or wanted special guardianship; in fact it held that the guardianship attitude brought them more disabilities than privileges. It stressed the cases where the new laws made women give up their jobs to men. The Women's Party placed itself on

record as favoring the inclusion of men in all labor laws, but its first plank was repeal of all laws covering women only.

Other women's organizations took a different view, whether because they favored all types of humane legislation or were particularly interested in the plight of underpaid women. Much of the work of getting laws enacted was done by the National Consumers' League and the Women's Trade Union League. The former—composed chiefly of women—tried to bring about changes in working conditions directly through consumers' boycotts; the latter concentrated its efforts on unionization. Both turned to legislation, until the Consumers' League and its branches soon became almost entirely a lobbying organization.

Especially in the decade 1910-20, the campaign waged for minimum wage laws went through the familiar preliminary stage of an investigation by a committee of the legislature, which is so often a device for sidetracking the proposal. The opposition from employers did not seem very great at first, and when 1912-13 saw nine of these laws passed, there was great confidence that more and more states would swing into line. It will be recalled that this was a time of great interest in labor legislation; workmen's compensation and mothers' pensions then coming in were very nearly to sweep the country by 1919. However, the progress of minimum wage legislation was much more limited; by 1923 only fifteen states, the District of Columbia, and Puerto Rico had passed laws, of various degrees of vitality.

The slackening of the minimum wage movement was perceptible in the legislative year 1915. To a considerable extent this drop may be described as a reaction against the previous legislative liberality. In New York, for instance, partly as a result of the Factory Investigation begun in 1911, many amendments made the labor laws more stringent in 1912-13. But a slump came in 1914.

The business depression aggravated by the outbreak of the war in Europe came at a time when industry was adjusting itself to the new requirements of the law. Naturally enough there was a tendency to blame the new legislation for the general business decline. The opposition made political capital of the protest on the part of employers and succeeded in gaining control of the legislature in 1915. As was to be expected repeal bills of every description filled the calendar.²¹

The New York Factory Investigation had studied minimum wages, but its bill was not introduced until 1915, which was too late. There was no revival of interest when the Supreme Court divided evenly on the constitutionality of the Oregon minimum wage law and so left the law intact, or when Congress, legislating for the District of Columbia, enacted the Consumers' League

²¹ U. S. Department of Labor, *History of Labor Legislation for Women in Three States*. Women's Bureau. Bulletin 66. Government Printing Office. Washington, D. C. 1929. P. 88.

model bill without dissent in 1918. Only three laws were passed in 1919, and one in 1923. Of those in 1919, one was in a federal territory, Puerto Rico; another was put through by organized labor in Texas; the third was put through in North Dakota by the Non-Partisan League. The 1923 law was South Dakota's, passed despite a generally adverse situation. In sum, after the War, there was a general movement toward "less government in business." The employers had organized their opposition more adequately²² and, since money wages had risen since 1913, the women's rates did not seem low.

Economic policy and the Constitution. In 1923 the United States Supreme Court voided the District of Columbia law in *Adkins v. Children's Hospital*²³ and later also voided the state laws brought before it. That these laws were almost all "mandatory"—compulsory—is somewhat surprising, in view of the precedent set in Massachusetts in 1912. Here the supporters of minimum wages, unable to get a mandatory law, agreed to a "directory" one, in which the only penalty was publicity. Nebraska's law, the other directory one, was never made use of. In 1921 the proponents of minimum wages in Ohio preferred no law to a bill passed by the Senate, which was like the Massachusetts law but excepted firms unable to pay the minimum and provided for publishing the names of complying firms and not of violators. The Massachusetts Supreme Court held that a noncompulsory law was constitutional, but it later limited its decision by ruling that newspapers could not be compelled to publish the names of recalcitrant companies.

The mandatory laws provided that workers could bring suits to recover wage deficiencies and that the state could prosecute criminally. A typical procedure (used also under the N.R.A. and the Fair Labor Standards Act) was to threaten prosecution unless the deficiencies were made up. Workers are more likely to complain when wages are short than when other labor laws are violated. However, in order to secure compliance, wage boards usually have fixed rates which have been no greater than the higher-paying employers were already paying. That is, whether the law is mandatory or directory, the administration depends on getting co-operation from the industry, or from a large part of it. Thus it was possible for the California minimum wage administration, with the help of most employers, to carry on even after the adverse Supreme Court decision of 1923. The co-operating companies regarded the law as a blow to their price-cutting competitors. In 1925 Wisconsin, when it passed a new law phrased to meet the Court's criticism that minimum wages had no relation to the value of the services rendered, tried to secure compliance without prosecutions in order not to risk a court reversal.

²² E. Brandeis, "Minimum Wage Legislation," in *History of Labor in the United States, 1896-1932*. Vol. III. The Macmillan Company. New York. 1935. P. 519.

²³ 261 U.S. 525.

The majority opinion of the Supreme Court in 1923 stressed that the declared basis of the rates fixed "is not the value of the service rendered, but the extraneous circumstance that the employee needs to get a prescribed sum of money to insure her subsistence, health and morals." Elsewhere it said: "To the extent that the sum fixed exceeds the fair value of the services rendered, it amounts to a compulsory exaction from the employer for the support of a partially indigent person, for whose condition there rests upon him no peculiar responsibility." The Court alleged further that the minimum wage in such a case "arbitrarily shifts to his shoulders a burden which, if it belongs to anybody, belongs to society as a whole." Society has recently recognized this to some extent. In certain states relief is now paid to families whose wage income falls short of their basic needs. But, unless there is some guarantee (such as a minimum wage law) that the employer is paying wages equal to the value of the services rendered, he is arbitrarily shifting *his* burden onto *society*. Justice Holmes, dissenting in 1923, said: "The statute does not compel anybody to pay anything . . . women will not be employed at even the lowest wages allowed unless they earn them . . ." That is, the value of the women's services is the upper limit to which the law could possibly force rates. It would be justified in forcing them that high—else it would acquiesce in the worker getting less than he is worth. In trying to get rates up to this upper limit in as many firms as possible, the wage board might, to be sure, set rates which, if obeyed, would mean that some firms would replace some women by cheap male labor, if it is available, or perhaps that some firms would cut down their employment.

It may be that it is so important to abolish low wages that minimum wage laws should be added to the other economic forces that tend to put low-paying firms out of business. But there is no evidence that the state minimum wage laws had substantial effects of this character, since the raises they enacted were not so drastic, and typically meant only raising the rates of the lower-paying firms up toward the level of the higher-paying. Besides the limit set to such wage raising by the threatened dislocation of employment just discussed, there are also limits in the political resistance put up by those affected and in the fact that, the higher raises go, the more difficult enforcement becomes.

It should be clear from the above that the function of the laws—regardless of their language—was at least as much to proportion the worker's pay to "the value of the services rendered" as it was to "insure her subsistence." Even though the wage boards went through the motions of finding what wage rate (assuming full employment) would cover a certain minimum budget (for a woman without dependents), the fact that different rates were fixed for different trades showed that this budget calculation was a secondary matter. Moreover, as Holmes pointed out, as to value of services, the company has a

check on the legal minimum; if it rose above that value it would become non-operative—the company would dismiss the woman.

Thus the character of the laws would not be particularly altered if value of services were made the standard, instead of living wages. Proponents asked, if the Court wanted it that way, why not humor the Court? We have seen that Wisconsin did so in 1925 but did not dare put it to the test. When the Consumers' League drafted a bill for its 1933 drive, it followed a similar course, but in order to make clear that it was asking for no more government interference than would accomplish its humanitarian goal, it undertook to pronounce only against wages which were *both* "less than the fair and reasonable value of the service rendered and less than sufficient to meet the minimum cost of living necessary for health."²⁴ Thus if it could be shown that a rate did not yield a decent living (assuming full employment), but that it was no more than the service deserved from a business point of view, the rate would not be forbidden by law.

In attempting to apply this rule, the wage board was to (1) take into account all relevant circumstances affecting the value of the service or class of service rendered; (2) use the standards used by courts in valuing services where no rate has been contracted for, and (3) consider rates paid for similar work by the government or by employers who voluntarily maintain minimum fair wage standards. Slow workers, the value of whose services was exceptionally low, were not to be allowed to set the standard for the trade. If necessary they could be exempted from the rules, but the number of exemptions of any company was limited to a certain fraction of its women workers, to prevent general wage cutting under cover of exemptions.

Effects of wage laws. At the time of this renewed drive, in 1932-33, both employers and labor were divided in their attitudes. Employers always wanted their competitors to pay higher wages, and so the better-paying ones often favored minimum wages. Perhaps some of them hoped, too, that if generally applied, minimum wages would increase the sale of goods, which was currently very slow. But even the better-paying employers were very suspicious of government interference. While the New York laundry owners favored it, the hotel and restaurant owners did not. One chain of restaurants required every woman employee to write and hand in five letters to the New York legislature, opposing minimum wages; the company furnished the arguments and paid the postage.

Labor, too, had several questions about minimum wages.

²⁴ The argument for the constitutionality of these laws had rested largely on the tradition that the state's "police power" extended to furthering the health and morals of women; higher wages would nourish them and make it unnecessary for them to eke out their wages with prostitution. As we saw, the Court in 1923 pronounced against this method of helping the indigent. "Health" in 1933 was introduced as a *restriction* on the law, but even mentioning this proscribed word led to trouble in 1936.

1. Did they actually raise women's wages? a. Were legal rates much higher than the lowest rates previously paid? Were they enforced? b. If they did raise those in the lower brackets, did the pay of women above the minimum stay the same meanwhile, or even go down toward or to the minimum?
2. If they raised some women's wages, was it perhaps at the cost of throwing others out of jobs altogether? a. Were some replaced by men? b. Were some jobs abolished altogether?

Women's wages did go up as a result of minimum wage fixing. The American figures are fragmentary, because of the constitutional ups and downs of the minimum wage laws. Most of them refer to average earnings. If higher-paid employees were cut, this would counteract raises for the others, and average pay would fall or fail to rise noticeably. Since instead it has risen, it seems that the higher-paid women were not cut, and since in most cases it has risen substantially, it is clear that instead they, too, were raised.

California is perhaps the clearest case. Definite rises in the average pay of women resulted when it fixed successive rates (for all industries) in 1917, 1919, and 1920. The \$16 (33.3 cents an hour) rate of 1920 raised median earnings from \$13.85 to \$17.25 despite a clause permitting half of the women employees to be classified as beginners and so to be paid less. Even after the 1923 decision California "enforced" this rate with the help of manufacturers' associations. The existence of the rate probably explains why California women's wages were higher than those of other states in 1931. In 1933 New York undertook to regulate laundry wages, and in May, 1935, earnings in that field were 29 per cent higher than two years before, whereas manufacturing earnings in New York and laundry wages in Pennsylvania rose only 17 and 15 per cent, respectively, in the same period. An unfavorable court decision in 1936 had an immediate effect in depressing New York laundry wages.

Since the oldest minimum wage law—that of Massachusetts—was until 1934 noncompulsory, it was not possible to fix very high rates under it or even enforce adequately those that were fixed. It therefore would not have a great influence on either upper or lower bracket wages. However it reduced the per cent of charwomen getting thirty-two cents per hour from 40 to 3 per cent and raised the per cent of retail employees getting seventeen dollars a week or more from 8 to 26. Kansas minimum wages for laundries seem not to have greatly affected those above the minimum, apparently because the minimum was set fairly low. This situation contrasts with the conditions in the District of Columbia and, as we have seen, in California.

It may have been hoped by some that minimum wage laws for women would create more jobs for men and raise men's wage rates. They could raise men's rates only if they gave men new ideas about what rate to hold out for or, more especially, if enough men got women's jobs to reduce the supply of

male labor. If a minimum wage transferred women's jobs to men, it would seem to have been fixed above the value of the services rendered. But the men are not covered by this type of law and they may get less than the value of their services. The only way to check this would be to require the company to pay the men a rate that would cost it as much per unit of output as women's work would cost it. If the company then found it unprofitable to employ either a man or a woman in that job, it would be clear that the law called for more than the service was worth.

Similarly, if a company decided to move into a state which had no minimum wage law, women employees would lose their jobs to other women, not because the minimum was above the value of the service but because the law did not exist in all producing areas.

Some cases are known in which companies which farm work out to women to do at home have shunned a minimum wage state. Men have inherited women's jobs in few cases, since the going rates for men are usually well above those for women. In few cases have companies abolished a job or jobs because of the minimum. Firms which thought they would have to go out of business have found that under pressure they could introduce efficiencies that made up for any rise in labor costs.

It is possible to find out what companies do in these circumstances by interviewing executives and workers. This was the method used by the United States Women's Bureau in a detailed inquiry in 1926 which showed few cases of dislocation.²⁵ Statistics may be drawn up to show whether the employment of women has fallen off in minimum wage states. (This procedure is complicated by the fact that other labor laws covering women only are involved also.) In California it is unlikely that minimum wages prevented the employment of women, for the census shows that between 1920 and 1930 it rose 69 per cent while in the country as a whole it rose only 13 per cent. A more recent Women's Bureau study shows that between May, 1933, and November, 1935, the number of women employed in laundries rose 6 per cent in New York, which was then a minimum wage state, and only 3 per cent in Pennsylvania. The proportion of women to men in New York did not decline. Three companies admitted discharging some women because they needed part-time workers and because the minimum rate for part-time work was higher than the ordinary minimum.

An inquiry in Wisconsin before the 1923 decision covered 863 companies. Of these 96 per cent claimed not to have dismissed any women; 4 per cent admitted dismissals because certain women were too slow to keep on under the new rates. Slowness is, of course, a general problem of minimum wage legislation. While higher wages usually improve efficiency, and some marginal workers may for this reason begin really to earn the minimum wage for

²⁵ U. S. Department of Labor, Women's Bureau, Bulletin No. 61, cited earlier.

the first time, yet there are likely to be workers who are handicapped or abnormally slow. If they are not to lose their jobs, they would have to get exceptions from the law, as is usually permitted. Learners, too, do not produce much at first, and temporary exceptions have to be made here as well. Since both these situations can be used to evade the law, to prevent evasion companies and handicapped individuals are investigated or a company is limited to so many exceptions per 100 employees.

The handicapped workers are only one group which fears to lose its jobs because of minimum wages. We have already noticed that women in general fear to lose jobs to men. Similarly workers in one part of a state which is traditionally a low-wage region may fear to lose them to workers in another part, if the same minimum wage is now applied to both and if this fact alters competitors' price policies. To meet these fears, "differentials" are introduced into minimum wages. For instance, if learners may be hired at 80 per cent of the regular rate of forty cents, there is a learner differential of eight cents or 20 per cent. Wisconsin, for instance, has had lower rates for smaller towns; similarly, New York differentiates between New York City and the rest of the states.

Recent state laws. Let us return to the 1933 drive for minimum wage legislation. By 1932 the depression had driven wage rates way down. Even though demand had fallen, these rates were below value of the services; even though retail prices had fallen, the rates were often below subsistence. Since, on top of this, these low rates were usually earned very irregularly, it was felt that labor ought to be conciliated in some way. Social security was one suggestion. Another was a general wage and hour law. A more conservative group suggested the revival of the movement for state minimum wage laws.

Early in 1933 the New York legislature passed both a mandatory bill covering women and a directory bill covering men and women. Like others passed at this time, the mandatory bill provided for a 9-month experimental directory period in any industry before the legal wage became compulsory.²⁶ Governor Lehman, who had recently come over to the idea of minimum wages, signed the mandatory bill. President Roosevelt then wrote to the governors of thirteen industrial states, urging them to follow New York. Connecticut, Illinois, New Hampshire, New Jersey, and Ohio did so; and Utah too replaced its old, repealed law.

Interest in the minimum wage movement continued, but for two years the N.R.A. overshadowed it, setting code minimums somewhat above those which states had set (see below). Doubts about N.R.A.'s permanence led to

²⁶ It would never become compulsory if everyone obeyed it. But when there is a fringe of "chiselers," the obedient firms have a right to expect that the others will be compelled to obey.

the adoption of an unusual device for overcoming the reluctance of each state to precede the other. We saw earlier that two states have adopted hours laws conditioned on similar action by others. A more formal approach to this method is the interstate compact. A conference of Northeastern states led not only to several laws in these states, but also to the drawing up of a compact. In 1934 Massachusetts replaced its directory act by a mandatory one and also became the first state to ratify the compact. New Hampshire ratified it in 1935, and Rhode Island, which in 1936 passed a great many labor laws, ratified the compact in that year. Congress approved the states' action in 1937.

The New York law was the first to be tested in the courts. The laundry associations favored their minimum, but the restaurant and hotel associations, which were scheduled for the next application of the law, easily found a laundry owner to challenge the law.

The New York law, like others, used the wording endorsed by the Consumers' League as meeting Supreme Court objections: a wage was unfair only if it fell short *both* of the value of the service and of the amount needed for health. Nevertheless the New York Court of Appeals in 1936, in a four-to-three decision, found it so much like the District of Columbia law that it proclaimed itself bound by the Supreme Court's 1923 decision.²⁷ To be sure, it did not in so many words hold it unconstitutional under the New York Constitution; if the Supreme Court wanted to reverse its 1923 stand, the New York court would follow it.

The United States Supreme Court promptly heard the case and while it was considering it the Supreme Court of the State of Washington, in the Parrish decision, boldly held valid a 1913 law which, of course, used only the "living wage" standard.²⁸ The federal Supreme Court, however, held the New York law invalid by a five-to-four decision.²⁹ The mention of a reasonable standard of living in the law seemed still to trouble the majority, even though it was so strongly qualified by the mention of value of services. Though on its very face the law was different from the District of Columbia law and met the chief objection of the Court's 1923 opinion, yet the majority based its decision on that opinion and stated that neither counsel nor the New York court had distinguished the New York law from the District of Columbia law. A few months later the Ohio Supreme Court defied this ruling by upholding the Ohio law.

In the early part of 1937 President Roosevelt's proposal to reform the judiciary led the Court to make several liberal decisions, of which we have already noted those upholding the N.L.R.A. Another case before it was the *Parrish Case*. If the New York law or a similar one had been up, the Court

²⁷ *Morehead Case* (1936) 270 N. Y. 233.

²⁸ (1936) 55 Pac. (2d) 1083.

²⁹ *Morehead Case* (1936) 298 U.S. 587.

could have "distinguished" it from the District of Columbia law. However, the Washington law being before the Court, Justice Roberts joined the old minority to approve it, without waiting to save the Court's face.³⁰

Within three months four new laws had been passed and several others strengthened. This brought the total to twenty-two states plus the District of Columbia. The Oklahoma law applied to men as well as to women. If the legislative season had not been nearly over, more might have been passed. The delay until state legislatures met again in 1939 gave the reform pendulum a chance to swing back again, pushed along by a decline in business, but not before Congress passed the Fair Labor Standards Act.

THE N.R.A.

The National Recovery Administration of 1933-35 (N.R.A.) was the forerunner of the Fair Labor Standards Act of 1938, but it is also a historical event, the second act of the depression, dramatic at first, dragging later. It was accepted for a time as a panacea; the country had been groping for three years for a panacea. It was aimed not so much to reform through wage and hour legislation as to promote a business boom.³¹

Higher prices and the wage-hour question. The basic clue to the N.R.A. is the businessman's predilection for higher prices. By 1933 prices in most lines had fallen far in three years. Businessmen felt that the antitrust laws ought to be repealed so that it would be easier to agree to limit output and raise prices. They could point out with reason that falling prices intensify a depression.

The trend toward price raising and output lowering had previously expressed itself in an indirect way in codes of business ethics promulgated by trade associations. In the case of several of these the Federal Trade Commission consented to endorse the ethical clauses which seemed untainted with monopoly.

Another forerunner of the N.R.A. was the Swope plan, a specific proposal to legalize restriction of output. Gerard Swope, head of the General Electric Company, proposed that trade associations be encouraged to formulate rules of fair competition; that, where this involved price maintenance, the govern-

³⁰ *West Coast Hotel Case* (1937) 300 U.S. 379.

See also Ethel M. Johnson, "The Administration of Minimum Wage Laws in the United States," *International Labour Review* (February, 1939), Vol. 39, No. 2. Frank de Vyver, "Regulation of Wages and Hours Prior to 1938," *Law and Contemporary Problems* (Summer, 1939), Vol. 6, No. 3, pp. 323-33. United States Department of Labor. *State Minimum-Wage Laws and Orders: An Analysis*. Bulletin 167. Women's Bureau. Government Printing Office. Washington, D. C. 1939.

³¹ The following account is based chiefly on the writer's observations as a technical adviser in the Labor Advisory Board of the N.R.A.; on E. Stein and others, *Labor and the New Deal*, Rev. Ed., Crofts & Co. New York. 1935; and on L. Lyon and Others, *The National Recovery Administration* Brookings Institution. Washington, D. C. 1935.

ment help instead of hindering the association; and that the association set up unemployment insurance for the industry. This plan was calculated to win the support of both capital and labor for it offered each something. The pattern was to reappear in the N.R.A., but there labor's *quid pro quo* was not unemployment insurance.

The A.F.L. opposed unemployment insurance until 1932, six months after the first state law was enacted. As to spreading the work, unions were divided in their practices. Some insisted that it be spread among the whole force during slack seasons. Others rather favored laying off altogether those for whom there was not full-time work, but insisted that it be done in order of seniority. The A.F.L. now supported the proposal for a thirty-hour week, which would have spread the work more, in industries which had not already spread it very thin. Presumably the chief reason for the A.F.L.'s attitude was the feeling that a thirty-hour law would set a new norm of low hours which would influence hour schedules when prosperity returned. Moreover, short hours could be expected to push up hourly wage rates. It was on broad public grounds that the A.F.L. pleaded there should be higher wage rates in a depression. Higher rates were needed to enable consumers to buy the whole output of industry; purchasing must be increased by putting purchasing power into the hands of labor. In some lines hourly wage rates began to fall when the business recession began, in 1929-30, and in others a year or so later. The decline was so great as to revive the minimum wage movement, as we saw, in defiance of the Supreme Court decision against it in 1923. There was discussion of the need to fix minimum wage rates if Congress were to put through the thirty-hour law in order to spread work; thirty hours at, say, fifteen cents an hour is only four dollars and a half.

It has often been said that labor concessions were necessary to make industrial labor, especially organized labor, support the fair-trade and higher-price proposals of business. To be sure, labor organization was very weak, and the federal government was already providing more relief and public-works money than before; hence the Administration might have conciliated labor with much less. Also, it might have tried to conciliate by means of the Swope proposal—the unemployment and old-age insurance which it did introduce two years later. Instead, the N.R.A. law of June, 1933, contemplated codes which would cover both hours and wages and perhaps other conditions, and in addition Section 7(a), which has been discussed in Chapter 30. Although the law did not mention child labor, the codes were drawn to regulate it as well. It may be that these provisions were not sops to labor but part of the Roosevelt approach. Lessening child labor was a reform Roosevelt was glad to push, even aside from the fact that it would reduce immediate adult unemployment. Short hours would solve the relief problem, it seemed. If wages in general went up, consumer purchasing power would be greater.

Roosevelt expected governmental minimum wage rules to bring about some raises, and (according to the A.F.L. interpretation) he expected the unions, strengthened by 7(a), to bring about the rest. Perhaps he hoped that the strengthened unions would act as political reinforcements for him.

That these proposals were not simply sops to labor is suggested by the fact that organized labor had regarded most of them with suspicion in the past, and part of organized labor was still suspicious. Labor leaders have always feared that government-sponsored improvement would take away much of the reason for the unions. Moreover, where they accepted the idea of legislation, they had the usual American prejudices against federal action. They feared that minimum wage rates would not stay minimum; that employers would pay no one more than the legal rate. Some feared that as its next step the government would fix maximum rates. We saw above that not all unions believed in work-spreading, especially if there was government relief available for unemployed men. Even as to Section 7(a) some concern was expressed lest it lead to government regulation of labor unions.

In general, however, labor *was* favorable to the proposals. After a three-year depression government action had begun to seem the only hope for alleviating it. Moreover, labor hoped that the wage and hour norms set in the emergency might carry over into prosperity even if the N.R.A. were dropped. Section 7(a) seemed too good to be true, and it looked as if the unions were to be given an official place in the code-making process.

Businessmen as well as unions differed in their attitudes toward "spreading the work." For some it was less costly than for others. There were those who foresaw the imposition of a heavier tax burden if business in general chose to let more people go on relief. Many favored it as a general measure even though they might deplore its effects on their own businesses.

The government wage raising efforts of 1933 might be regarded as attempts to keep wages in relation to prices so that wage earners would not be antagonized by rising prices. But statements of the Administration indicated that it expected wages to play an active role in the business revival. Employers were exhorted to increase output and wage rates on the theory that, with everybody in all fields co-operating, the extra output would be sold and the profits would arrive shortly, though perhaps not immediately. These profits were to be derived from the increased volume and not from raised prices, for if prices were raised less could be bought. So, in order to raise labor's purchasing power and to start a revival of buying, wages would have to rise ahead of prices. A compromise form of this idea was embodied in the exhortation of the President's Re-employment Agreement (P.R.A.) that employers should not raise prices by more than the extra amount paid per unit for labor and materials because of the N.R.A.

There was a boom, but it collapsed in the middle of 1933, barely three

months after it began and with it went the hope that depression could be swept out of the way by a wave of confidence. No longer important as a factor for revival, the N.R.A. was still a power in the fields of business organization and of reform. It fostered trade associations, which affected workers chiefly in their role as consumers and in their collective bargaining activities. As for reform, despite business resistance, new norms of labor conditions were set up, and the idea of federal legislation was advanced further than it was set back by the gradual failure of the N.R.A. and the *coup de grâce* given to the law by the Supreme Court.

The codes and wages. The early period of the N.R.A. was notable for the haste and anxiety displayed toward getting all industry and trade in the country into immediate co-operation. Each of the main industries was to be put under its own code immediately, but, although the cotton textile code was drawn up before the law was passed, those of other industries were slow to appear. Moreover, many subindustries and small industries sent representatives to Washington to get codes. The law required a public hearing—at the very least—before the President could approve a code. Though the N.R.A. was actually able to create nearly 600 codes within a year, the excitement of the early period was responsible for the use of the general clause in the law (Section 4[a]) authorizing the President to make agreements. Under this section was established the President's Re-employment Agreement or blanket code (P.R.A.) which, together with the Blue Eagle (certificate of adherence to the N.R.A.), was "sold" to the country in a tremendous publicity drive. Few businessmen wanted to be "slackers" and so most signed with P.R.A. It embodied the standards which the Roosevelt Administration at the time looked on as the reasonable common denominator for American business. Maximum hours were forty for clerical workers and thirty-five for manual workers, with forty in peak weeks. The minimum wage was forty cents an hour for thirty-five hours a week for unskilled workers.

The typical code approved thereafter specified forty hours for manual workers; wages were to be at least forty cents an hour, with exceptions for traditionally low-wage people or areas. Thus the P.R.A. came to be regarded as having too high standards, and no very great efforts were made to enforce them after the exhilarating effect of patriotic emotion had worn off.

At the height of the P.R.A. drive it looked as though all industry would be under a single standard. But many canny employers failed to sign; some went under less stringent codes; and it became apparent that some employers observed the Act less scrupulously than others, depending often upon whether they would lose trade if they lost the Blue Eagle. A further weakness developed when it was announced that if an industry had submitted a draft code (with less stringent labor terms) the P.R.A. members of the industry would

be allowed to substitute the draft code's labor clauses temporarily for the P.R.A. Industries like aircraft manufacturers were still "temporarily" on this arrangement in 1935. They were selling goods to the government under it—the only reason most of them had for clinging to the Blue Eagle even to this extent.

The labor provisions that were written into the various N.R.A. codes depended mainly on the interaction of two factors: the wages paid by the majority and the anxiety of the majority to impose either higher wages or trade practices on the minority. There were many smaller factors. The time at which a particular code went through helped determine its general level of wages, hours, and so on. Precedent kept new codes from departing too far from the general run but as time went on two trends developed—toward longer hours, lower wages, and more exceptions; and toward more refined draftsmanship and more clauses covering matters like safety and health and methods of wage payment.

Unskilled minimums and differentials. Let us consider first the chief wage provision—the unskilled minimum. Wages paid by the majority were a determining factor here in the sense that if the majority paid more than the minority per unskilled hour, it was willing to accept its own typical unskilled rate as the code minimum and thus brought the minority into line. This is the usual effect of minimum wage legislation. However, the minority resists being brought into line. If it is located in a different region it may say that it will give a raise if the majority raises too, so that the old competitive relation remains. Under the N.R.A., the majority presented the code, and if the code was approved it could be enforced against the minority. However, discretion tempered this behavior, partly because the law had said that codes were not to oppress small enterprises—often the low-wage ones. As a result, the minority usually had to submit only to some whittling down of the differential between it and the majority. This meant incorporating several legal minimums for unskilled workers into one code. Examination of the top minimums shows that codes which named at least forty cents an hour (a few named more) covered nearly half the workers who were under codes. Almost all the rest were between thirty and forty cents, very few below twenty cents. One can see the general size of the differentials granted to various favored groups if one looks next at the bottom minimums (identical with the top in codes where no differentials existed). Of these only a fifth (again measured by total number of workers attached to the industries involved) named forty cents or over; another fifth were under twenty cents, and the rest lay between.

The first code—cotton textiles—had had a differential for the South. The P.R.A. had said that if a company had paid less than the 40 cents an hour on a job in 1929, it could pay what it paid in 1929, but not less than 30 cents. This

device at most narrowed the gap between the higher and the lower paying companies and was taken over by only 26 out of the 695 codes (including supplements) approved between June 16, 1933, and August 8, 1934. But more specific differential rules were written into many. Lower rates for smaller towns were permitted in 153; the P.R.A. had also done this for clerical workers. This differential was explained in two ways: that it cost the worker less to live in the small town; and that the small firm deserved tender treatment. The first reason was never substantiated or made precise; the second ignored the small towns in which there was one large plant, and it ignored the small firms in large towns.

A similar practice was the setting of different code minimums for different regions, typically lower in the South than in the North. This was defended by the same arguments used to justify the small-town differences, but it was also alleged that unskilled workers, especially Negroes, were worth less per hour in the South and so expected less because of the lower standards of life to which they were accustomed. These regional differentials were in 353 codes, including 122 that already had small-town differentials; 412 had either a 1929, a regional, or a small-town clause. The lower minimum for women than for men, which was in 233 codes, helped preserve the previous inequalities between enterprises. It was said that women would lose their jobs if this inequality were not maintained. Similarly it was argued on behalf of all these other differentials that without them Negroes would lose their jobs, small towns would lose orders, and so on.

Skilled minimums. The preservation of traditional differentials extended also to the wage clauses purporting to affect the wages of workers above the minimums. The P.R.A. clause read that these workers were to get as much for the new short week as they had for the old long one. Codes involving a third of the "codified" workers followed this model, which we will here call Plan A. It left companies in roughly the same relative positions—except that one company might previously have worked longer hours than another. In fact, since there had been much part-time work during the depression, it was often possible for a company to allege that it was already working under the forty-hour minimum and so need not raise hourly wages.

Another third of the workers were under codes which adopted union scales (Plan B) or at least undertook (Plan C) to be somewhat definite by naming rates for leading jobs below which companies were not to go. Plan C counted on the accustomed relations between jobs in the industry to see that the unspecified jobs were not left behind. The other third were under a variety of plans so indefinite as to be meaningless.

Code No. 1, the cotton-textile code, was originally a version of Plan C but later changed to Plan A. At first it provided that precode differentials (in

cents) between the lowest-paid group and the more skilled workers were to be maintained. Since the lowest-paid group was often boosted a good deal in order to reach 30 and 32.5 cents an hour, manufacturers got Roosevelt to change the rule to one calling for the maintenance of the former weekly wage of persons above 30 and 32.5 cents. The maintenance of precode differentials between skilled and unskilled was dropped, and efforts of the Labor Advisory Board to put it into other codes were unsuccessful.

Conceivably Plans B and C could have been used without regional and other differentials, the more so since they were typically found in unionized industries and since unions try to get the same wage scale throughout a competitive area. To be sure, unions always run into the obstacle that some regions have been able to get away with lower wages. If the companies in a low-wage region are unionized, they threaten to give less employment or none at all if they have to pay higher rates. If they are nonunion companies, they disregard or fight the union's attempts to raise their scale up to that of the others.

Here, then, the situation we saw in connection with unskilled minimums repeats itself. Every company wants its competitors to pay higher wages. Specifically, the higher paying companies see in legislation a chance to bring the others into line, and the union supports them. If the higher-paying companies are in a majority (and typically it is a strong union that is responsible for this), they have a better chance to impose norms on the others. Legislation or codes imposing hours or wages will usually set up norms low enough so that they will actually affect only a small fraction of the industry.

Imposing norms may then take any one of several forms. It may level up the companies with the lowest rates and longest hours. Perhaps in addition it may narrow for intermediate companies (say in certain regions) the traditional amount by which their wages are below the rates paid by the others. In addition, perhaps, the higher-paying companies are pulled up somewhat and pull the others along after them. Nevertheless, differentials are hardly ever wiped out altogether.

Thus in a nonunion industry, for example, legislation operates somewhat as a union would, and in a unionized industry it secondes the union's efforts to narrow the differentials. An illustration of this is the soft-coal industry. The union was very weak in 1932-33, but it had an advantage in that most workers had known it when it was strong. Like some others, it exploited to the full the hopeful months after Roosevelt's inauguration and its membership rose rapidly. If it had remained weak, the companies paying higher rates (in regions where the union had retained some strength) might have been able to get through a code that brought their competitors into line somewhat. As it was, it was the union that brought the lower paying companies into line—though many differentials remained—and at the same time raised

the general plane of labor conditions. It was more or less incidental that this was accomplished through an N.R.A. code or, rather, an N.R.A. agreement under Section 7(b). When the union and the higher-paying companies tried later to use the N.R.A. to narrow the Alabama and Kentucky differentials still more, Alabama's protest got it its old rates back, and Kentucky mines got an injunction against the N.R.A. It was no coincidence that the union's organizing campaign, which had at last conquered West Virginia, had not conquered Alabama and Kentucky.

Code bargaining. It was suggested above that not only the wages paid by the majority (in relation to those paid by others) were a determining influence, but also the anxiety of the majority to impose either higher wages, for example, or fair-trade practices on the minority. This last point refers to the fact that it was not compulsory for an industry to have a code—nobody took much stock in the strong language in the Act which authorized the President to impose labor codes, to license business, and the like. Businessmen were reluctant to submit to government regulation—even when they stood to gain by bringing competitors into line. If there was not a substantial number of members of an industry who wanted a code for some reason or other, the industry would have to be cajoled into having one—if it was important enough. The code would have to contain wage, hour, child labor and collective bargaining clauses; but these could be pared down to very low points if necessary to induce the industry to accept them. Thus the automobile manufacturers already had a tight association and did not want or need to bring any competitors into line (the one nonmember, the Ford Motor Company, was co-operative enough and no code clause had yet been devised which could tame its independent ways). So the N.R.A., in order to sign the auto industry up, had to concede a minimum-wage clause that affected very few people, an hour clause that sounded like forty hours but (through an “averaging” device) was really forty-eight hours for ordinary workers and unlimited hours for essential workers, and finally a “merit clause” purporting to qualify Section 7(a). It was this section that was presumably the chief reason why the manufacturers liked the idea of a code so little. In practice it probably made little difference in their behavior, for it affected only slightly their various devices for resisting unionism. The writing-in of the merit clause was a gesture—to show that they could resist the government—but it did not alter the nature of 7(a). Other industries unsuccessfully tried to write in the same gesture, but only the chemical industry was allowed this privilege. It is interesting to note that the industry is controlled by the DuPont family, which also dominates the automobile industry through the General Motors Corporation.

Similarly the newspaper industry was able to defy the N.R.A. It relied

partly on propaganda which featured "the freedom of the press," and partly on the fact that competition was merely local and even locally did not seem to call for any new devices to prevent "chiseling." Hence when their code was adopted, it contained, for instance, one of the few qualifications on the standard sixteen-year child labor clause, inserted in order to except the newsboy.

From these cases—and cases in which no code was ever adopted such as aircraft manufacture, anthracite coal mining, and electricity production—the industries shaded off into those in which there were greater and greater degrees of anxiety to have a code in order to curb a minority.

Advisory boards. Was it necessary to make concessions to labor in order to get a code satisfactory to business? One of the criteria of the success of a deputy administrator, midwife of the code, was good labor clauses, especially short hours which might create "re-employment." The deputy could play upon the anxiety of the industry to get concessions for labor. If he did not, the Labor Advisory Board (L.A.B.) might give an adverse opinion on the code and he would be burdened with accounting for his failure to secure a code satisfactory to both sides.

Perhaps the chief criterion of the success of a deputy was his progress in diminishing the mountain of proposed codes. This often worked in favor of lax labor clauses. To get the industry's assent and be able to send in another code for approval, the deputy would risk the L.A.B.'s dissenting, especially if the labor clauses were no more lax than those of many other codes. The force of the L.A.B.'s objections could be shrugged off with "They're never satisfied." This attitude was typical, since most of the deputies came from the business class or from the army.

The nuisance value which the L.A.B. exercised on behalf of the workers of typical industries contrasts with the effect it had on the industries that were highly organized. What additional leverage did unionization give? A strong union could threaten to strike, and the code became essentially a collective bargain. In addition, such a union could prevent official approval of a code that many firms in the industry wanted; it was able to exert too much power by threatening a strike, which would be another "headache" for the Administration and might hinder revival, and by stressing the number of votes which it controlled.

If an industry wanted to include price-fixing or similar clauses, the labor representative was usually glad, not only because this gave him leverage to use in asking for better labor clauses, but also because higher prices were expected to lead to higher profits, and a higher rate of profit, in turn, or even the prospect of it, is likely to mean less pressure to get the most out of labor.

It is thus not surprising that there was some antagonism between the L.A.B. and the Consumers Advisory Board (C.A.B.). The latter struggled

against the restrictive, price-raising clauses of the codes, but it did not go so far as to protest against wage raises (even though the companies paying higher wages wanted their competitors to pay more chiefly because they hoped increased labor costs would raise the competitors' prices). The C.A.B. felt that, in favoring low prices, it was representing the interests of the workers as consumers and regretted that the L.A.B. did not support it instead of striving for high prices. For a year it seemed as though the C.A.B. were powerless. Since people were not organized as consumers even as much as they were organized as workers, price raising evoked almost no reaction except the occasional protest of a purchasing agent, either public or private, who found that industries from which he was buying were raising prices out of proportion to the increased costs. But shortly the antimonopoly bloc in Congress recovered its voice, and the N.R.A. became less and less willing to sanction price fixing. The N.R.A. also began to supervise the work of the code authorities, which had been left largely to the trade associations. It was mainly because of the prohibition of price fixing that business enthusiasm for the N.R.A. had cooled and its mandates had lost their authority, by the time the Act itself was voided by the Supreme Court's adverse decision.

Compliance. The N.R.A. made a grave mistake in creating more rules than it could enforce. This might have worked if the patriotic fervor of the summer of 1933 had been contagious enough to spread to all companies and had constantly renewed itself. The N.R.A. might even have worked if all workers and all competitors had been willing to report violations by a company and if a system of prompt prosecutions had been built up on this basis. It was urged by some that the N.R.A. could continue as a force for reform if it would restrict itself (at least at its beginning) and only enact what it could hope to enforce. Another school of thought held that centralized administration could not efficiently do more than encourage the states. This fits with the opinion of the Supreme Court in the *Schechter Case*, in which the law was held unconstitutional.⁸²

The N.R.A. set up a Compliance Division which worked through state offices, later grouped into nine regions. It tried usually to secure compliance without enforcement. Where necessary, the law contemplated injunction proceedings (with fine and imprisonment for disobedience), proceedings under the Federal Trade Commission Act, and indictments for misdemeanor, subject to a fine of "not more than \$500 for each offense, and each day such violation continues shall be deemed a separate offense."⁸³ What came to be the chief instrument of enforcement was not even mentioned in the Act—

⁸² (1935) 295 U.S. 495.

⁸³ In 1933 several states passed laws making it a state offense to disobey a code, legislation which was later held unconstitutional.

the Blue Eagle used to signify that a company was obeying the code of its industry. A company found disobeying and persisting in its disobedience lost its right to "fly the Blue Eagle." Patriotic citizens were expected to boycott firms which did not sign the P.R.A. or which later violated their codes. But the public enthusiasm essential for effective boycotting did not last through 1933, and practically the only disadvantage about losing the Blue Eagle was some adverse publicity at the time plus the refusal of the federal government to buy non-N.R.A. goods. Some firms were able to get round this refusal, and most companies do not of course sell to the government.

Reports of wage cuts and increased hours, after the Schechter decision, indicated that there had been a considerable degree of compliance. But in many industries and districts major or minor violations were the rule. Frequently violations were not reported, or proof was inadequate, or "pull" was used, or the removal of the Blue Eagle insignia was not a punishment. There were some instances when removal was blocked by injunction, but the government was reluctant to go to court with a law that looked so unconstitutional. Since the N.R.A. was trying to help industries to help themselves, the government did not hire an army of detectives. In some cases the code authority did hire a squad to check up on trade practices or labor conditions or both. More often it was inactive. Some cases were prosecuted and a few convictions were obtained, but violation was encouraged by the fact that businessmen knew that only flagrant cases would be prosecuted, and that popular sentiment in the industry or the community was not behind the stricter rules.

In unionized industries the workers usually registered their complaints with the union, which tried to effect a settlement without going to the code authority. Often nonunion, or even union, workers saw no use in complaining to the code authority or were afraid to, though the President had proclaimed in 1934 that no company should fire or demote anyone for testifying against it.

In the automobile manufacturing industry a compliance case arose as a result of workers' complaints, which may be taken as an example. Unionism was just beginning in this industry. There was plenty of evidence of violations in the statistical reports on hours and wages filed with the deputy administrator at Washington, but he did not call it to the attention of the Compliance Division. When a group of workers, under A.F.L. guidance, filed a complaint that they were working more than the forty-eight hours mentioned in the code, a protracted investigation by the Compliance Division's local officers showed that the charge was true. A statement from Washington suggested that an appropriate punishment would be to have the company pay the workers time and a half for each hour over forty-eight. The local office interpreted "time and a half" to mean one and a half times the code's unskilled minimum of forty-two cents, that is, sixty-three cents. Another lengthy investigation showed that all the employees except three women had

been getting an hourly rate above the minimum, so that their pay envelopes actually contained more than forty-two cents for each hour up to forty-eight, plus sixty-three cents for every hour of overtime, which was all that the Michigan Compliance office was asking. The company solemnly handed each of the three women a couple of dollars to bring them, too, within this calculation, and the Compliance Division as solemnly closed the case. A.F.L. officials decided not to make a protest because they mistakenly thought that the company was on the verge of recognizing it.

The matter would have looked somewhat different if the overtime rate had been put at one and a half times the worker's *regular hourly rate*, a device which we shall see embodied in the Fair Labor Standards Act as a way of restricting hours and yet giving management some flexibility of schedule.

To make hour-limitation palatable to management, many codes, including that of the automobile industry, granted flexibility in hours through "averaging." Averaging permitted work over forty hours in busy weeks, provided, for instance, that the average of the worker's weekly hours for three months was forty. Though some codes limited the resulting temporary long hours by "time and a half" or by "time and a third" after the fortieth hour, the majority did not.

Of the twenty-two million covered workers, nearly five million were under codes which provided for averaging in one way or another. There were ten and a half million under codes which simply permitted longer hours in peak periods and over two million of these also had averaging. Of the nearly two million workers under codes which had general clauses permitting overtime, more than one million also had averaging. The codes whose basic hours exceeded forty contained as many exceptions as the others had, if not more. For instance, in the codes with basic hours under forty, 24 per cent of the employees were under codes with peak periods; in the forty-hour codes, 35 per cent; in those over forty hours, 71 per cent.

While such rules made for flexibility, they were the sort which made it harder for the workers to know when the code was being violated. Of course the worker often did not know the code. The problem of getting copies of it into the hands of the workers was met by the method usual in labor legislation: posters were to be hung in the workshops with the labor provisions printed on them. This was done in many industries, though employers complained that workers were developing exaggerated ideas about their rights. The steel industry, however, refused to put up their posters since they included a statement by President Roosevelt concerning the right of steel employees to join unions.

Several elements of the N.R.A. which we have already noted were perpetuated by later legislation. Section 7(a) was reborn in the National Labor Relations Act. Federal buying from Blue Eagle firms was revived by the 1936

Walsh-Healey Act. The Guffey law tried to regulate labor conditions in coal-mining areas. To the N.R.A. may be attributed the noticeable increase in strictness in the state hours laws, the renewed attempts to enforce minimum wage laws for women, and the several new ratifications received by the Child Labor Amendment. It should also be noted that from the time of the N.R.A. the Federal Department of Labor began to take more initiative in calling conferences about state legislation and in actually recommending labor laws to the states.

THE FEDERAL WAGE AND HOUR LAW

After the Supreme Court in the spring of 1937 had approved a broad interpretation of "interstate commerce" in the cases arising out of the N.L.R.A. and had approved minimum wage regulation in the *Parrish Case*, President Roosevelt on May 24 appealed for a federal wage and hour law. In July the Senate passed the Black-Connery Bill, which did not become a law, chiefly because the A.F.L. objected to giving a public board power to fix different wage rates in different industries and different regions. The compromise wage-hour bill which was passed a year later relied chiefly on standards fixed in the statute, though it also provided for possible variations through a tripartite committee to be set up in each industry. The original proposal had been a minimum of forty cents an hour and a maximum of forty hours a week. The Fair Labor Standards Act of 1938 (F.L.S.A.) had as a norm thirty cents and forty hours. The new law took effect on October 24, 1938, and except for the child labor provisions, was under a new Wage and Hour Division in the Department of Labor.

Hours. The law fixed as normal hours forty-four a week for the first year; from October, 1939, to October, 1940, they were to be forty-two a week; after that, forty a week. Thus business was given time to adjust itself to the changes, although many firms were already operating on the short week. Moreover, considerable flexibility is allowed by the law, chiefly because it permits any number of hours as long as time and a half is paid after the normal hours set by the law. This means weekly hours only, not daily. "Time and a half" means as to each worker "not less than one and a half times the regular rate at which he is employed" (Section 7[a]). It is possible for a company to evade this rule by reducing the worker's hourly rate enough to make up for having to pay time and a half for extra hours—by persuading him to accept sixty cents an hour instead of seventy cents on the promise of plenty of overtime at ninety cents. Since, it seems, there has been little evasion of this sort, the hour clauses of the Act in some cases amounted to raising workers' pay where it was not worth the employer's while to take on extra

men. In some cases they caused the employer to plan a more even schedule. Their chief function, however, was to encourage the spreading of work so that the unemployed would receive a share of it.

The N.R.A. had introduced the practice of overtime rates, long the custom in unionized industries, to a number of others, and the F.L.S.A. introduced it to still more. A company is allowed, by regulation, to begin its week on any day it chooses, as long as it does not try to alter its practice to evade the terms of the Act. But it is not allowed to average two or more weeks to avoid paying the higher overtime rate unless it can persuade a bona fide union to sign an agreement with it (in return for a thirty-eight-and-a-half-hour average week) which will permit weekly hours above normal in rush periods. Even then the Act requires (Section 7[b]) that time and a half be paid after the twelfth hour in any *day* and the fifty-sixth hour in any *week*. This clause is unlikely to be used, since union agreements usually provide for overtime after the eighth hour. However, the clause is a concession to the feeling of labor unions that it would be better if hours limitations are made by collective bargaining wherever possible. The overtime rate for a piece worker was (by regulation) to be one and a half times his average hourly earnings for the week.

Even greater flexibility was permitted in some cases (Section 7[c]). Any industry which the Administrator of the Wage and Hour Division rules is seasonal may work during fourteen weeks in any year without having to pay overtime till after the twelfth hour of the day and the fifty-sixth hour of the week. Moreover, certain industries are permitted to work long hours during fourteen weeks a year without any overtime at all being required. This last exception is applied to canning and slaughtering and to the first processing of agricultural products during seasonal operations.

Occupations not touching interstate commerce and others, listed under "Coverage," are outside both wage and hour rules. In addition exemption from the hour rules is given to employers engaged in the first processing of dairy products and sugar and the ginning of cotton and the processing of cotton seed; in fact if they have employees working at other occupations who work at the same place these are also exempt (Section 7[c]). Bus and truck drivers subject to the Motor Carriers Act and railroad employees are outside the F.L.S.A. hour rules (Section 13[b]); on page 718, above, we saw that outside limits are put on the hours of some of these men because of considerations of safety.

Wages. The F.L.S.A. graded its wage regulations even more gently than it did the hour rates. It set a general minimum of twenty-five cents an hour for its first year and thirty cents an hour after that, until, at the end of seven years, in October, 1945, the norm was to become forty cents. This

seems like an abrupt change in 1945, but it was expected that during the seven years most industries would have fixed new minimum rates between thirty cents and forty cents. Moreover, industries which could in 1945 show by a "preponderance of evidence" that forty cents an hour would throw many persons out of work were to be allowed to pay less than forty but not less than thirty (Section 6).

During the seven years, from 1938 to 1945, committees in various industries are to be appointed by the Administrator (Section 5). Each committee is to set a minimum wage in the industry at a point as close to forty cents as it can "without substantially curtailing employment" (Section 8); if the rate were set above the value of the services of many of the workers, they would lose their jobs. The committees are tripartite, made up of public, employer, and employee representatives, who receive, according to regulation, \$15 a day when in session, and traveling expenses. The Administrator is to survey for the committee the industry and its current wages. Both have power to summon witnesses (Section 9), and according to regulation, the members are not to disclose what they learn except with the consent of the Administrator. When the committee makes a recommendation, the Administrator, after giving interested persons an opportunity to be heard, puts it into effect if it is supported by the evidence. Companies objecting may appeal to a Circuit Court of Appeals (Section 10). The court may review only the law; it must accept the Administrator's findings of fact if they are supported by substantial evidence. If the complainant has new evidence to offer, the court must send the matter back to the Administrator. The appeal to a court does not suspend the Administrator's order unless the court specifically says so and unless the complaining company puts up a bond to guarantee full wage payments if the decision is against it.

If the Administrator approved a rate which put some companies out of business, he might still be following the letter of Congress's instructions that the minimum wages were not to curtail employment or earning power (Sections 2[b] and 8), for it is very likely that for every person put out of a job in this way another would be hired by some competing company. But actually minimum wage laws are usually interpreted and applied in a way to avoid dislocations of employment as well as to avoid net reductions in employment despite the interest of the high-wage companies in raising their competitors to their wage level.

The F.L.S.A. permits an industry committee to minimize dislocations by creating classifications and setting different minimums for them (Section 8). It does not permit the N.R.A. device of a "sex differential" or lower minimum for women, and if there are women in some occupations who are worth less per hour than men are, the committee will have to set the general minimum somewhat lower or risk displacing some of the women. Companies

were classified by many N.R.A. codes according to their accustomed wage levels, typically through "Southern differentials." The F.L.S.A. permits this sort of classification, but the line between companies must not be based on geography. Thus the first wage report approved by the Administration (effective September 18, 1939) set forty cents as the minimum for full-fashioned hosiery and 32.5 cents for seamless hosiery. The former is typically made in the North and the latter in the South. The apparel industry, to take another example, was put under one committee but the industry has many divisions for which various rates were fixed (ranging from 32.5 cents to 40 cents) based on the past wage practices in the various divisions. The Act (Section 8) instructs the committees to fix rates in various classifications after considering (1) "competitive conditions as affected by transportation, living, and production costs"; (2) union rates in the various classifications; and (3) rates paid by liberal employers. The latter two criteria would help the committee to decide on a general minimum for the industry as well as on differentials between the competing groups within it. The first criterion accepts the general justifications usually given by low-wage competitors—that "low-paid" workers are not low paid if the prices they pay are low, and that high-cost firms will curtail output and employment if their wages are forced up.

Besides the power to approve or disapprove differentials for groups within an industry which may be in competition with other groups, the Administrator has power to hear cases of hardship and grant exemptions to single companies. Moreover, he may fix lower minimums for learners, apprentices, messengers, and handicapped workers (Section 14).

Indentured apprentices are usually paid low wages because they are also receiving instruction in their trade. To assure adequate training, Wisconsin has for many years regulated apprenticeship, and under the N.R.A. the federal government set up a committee to foster such regulation in order to assure the reasonableness of exempting apprentices from the code minimums. This committee was still in existence when the F.L.S.A. was passed and is used by the Administrator (Regulations, Part 521) to check indentures submitted by employers who want to pay less than the minimum, presumably during the earlier, less productive years of the apprenticeship.

"Learners" is the term applied to workers learning jobs at which they can become proficient in a few weeks rather than in the three- or four-year period associated with apprenticeship. The N.R.A. experience showed that a lower rate for learners could easily be abused. The necessary learning period could be overstated; it might pay the company to fire all the learners at the end of the period and take on a new batch—or the old batch under new names. Under the F.L.S.A. the Administrator does not consider each learner separately, as he does the apprentice. In fact he favors applications from

groups of employers, for whom he can lay down general rules (Regulations, Section 522.2). Since the applications must show that trained workers are not available and give reasons why learners should not get the minimum the burden of proof is on the applicant (Sections 522.4, 522.7).

We may, as an illustration, take the general rules applying the learner provision to the hosiery industry in 1939. Occupations were divided into those requiring 480 hours of experience and those requiring double that. In contrast to a "full-fashioned" minimum of 40 cents and a "seamless" minimum of 32.5 cents, all "full-fashioned" learners were to get 25 cents and all "seamless" learners 22.5 cents during 480 hours. But learners in those occupations that had the double period of learning were to be raised, after 480 hours, to 30 cents and 27.5 cents respectively. Learners were to receive their full piecework earnings, if under them they earned more per hour than the learner rate. Where piece rates were not in effect, the double-period learners were to get 35 cents and 29 cents, respectively, in the second period. In ordinary cases companies' learners certificates were to permit no more than 5 per cent of the factory workers to be learners; but there might be 5 learners even in plants employing fewer than 100 persons. Larger percentages might be permitted through special eight-month certificates if a plant was starting up or expanding. The certificate, giving details of the exemption, was to be posted where learners could read it.

Individuals handicapped because of age or physical or mental deficiency or injury (but not those who are merely slow workers) may also be given permission to work at less than the regular minimum, usually 75 per cent (Regulations, Part 524). As with apprentices, each "handicapped" individual is considered separately.

Purpose and coverage. Section 2-a lists justifications for the Act. The first to be mentioned is the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being. Taken in the broadest sense, "standard of living" is affected not only by the wage regulation but by the hour and the child labor regulations. Section 2-a then intimates that federal regulation is justified because it is interstate selling which puts pressure on companies to cut wages. Moreover, a low living standard "burdens commerce" perhaps by keeping down retail purchasing. A low living standard is "an unfair method of competition" and "interferes with the orderly and fair marketing of goods." Presumably this clause reflects the complaint of high-wage companies against low-wage and low-price competitors. Finally a low living standard "leads to labor disputes burdening and obstructing commerce." Section 2-a states the purposes behind the law in such a way as to relate the law to interstate commerce and make it seem as constitutional as possible, but it makes no reference to the motive of spreading the

work through shorter hours, or to the motive of guarding the workers against being paid less than they are worth.

The F.L.S.A. undertakes to cover companies engaged in manufacturing and mining for interstate sale and in interstate commerce, transportation, and communication. Several noninterstate businesses were able to secure definite mention in the statute, as being outside its scope: small country newspapers, retail service establishments whose business is mostly intrastate, and city bus and trolley lines. But (beside the exceptions mentioned in "Hours") certain interstate trades were excepted too: agriculture and occupations incidental to it, and also the processing of agricultural products within the area of production,³⁴ fishery and related industries, seamen's work, air transport, and interstate trolleys and busses (Section 13).

Also exempted, in any business, are executive or administrative employees earning thirty dollars or more a week, professional employees, outside salesmen, and persons employed in a "local retailing capacity" (Regulations, Section 13, Part 541).

Various companies employing homeworkers tried to turn them from "employees" into "contractors" when the law was passed, but in various cases the subterfuge was prevented.³⁵

Enforcement. To enforce its wage and hour standards the F.L.S.A. threatens to punish employers who underpay either by paying less than the legal minimums or by failing to pay overtime above the legal hours. Moreover, it is a separate offense for the employer to ship, in interstate commerce, goods on which underpaid workers have worked, and courts are to take it as *prima facie* evidence that the goods were worked on by underpaid workers if the company has underpaid them within ninety days of the shipment. Dealers, too, may be punished for shipping these goods. This broad provision (Section 15) is presumably intended to prevent the employer from escaping by disguising himself as a dealer. It might also be used to cause dealers to boycott manufacturers who did not have clean bills of health.³⁶

On conviction violators may be fined up to \$10,000 plus a prison sentence up to six months if it is a second offense (Section 16-a).

The Administrator may prefer to seek an injunction against violators (Section 17) since it constitutes a definite warning and provides for a somewhat less formal trial than entailed in a criminal procedure. In one such

³⁴ Cf. "Hours," above. See U. S. Department of Labor, Wage-Hour Division, Interpretative Bulletin No. 14 (on the exemption of agriculture and the processing of agricultural commodities).

³⁵ Homework has usually been paid well below the minimum. For instance, stringing tobacco bags brought about six cents an hour. A. L. Fletcher, "Putting the Wages and Hours Act to Work," *Wage and Hour Legislation in Action*, National Consumers' League. New York. 1938. P. 7.

³⁶ A. Feller and J. Hurwitz, *How to Operate under the Wage-Hour Law*. Alexander Publishing Company. New York. 1938. Pp. 54-60.

suit an employer was ordered by a court to stay in jail until he had paid the back wages due.

If a company agrees to make restitution under a minimum wage law, prosecution is rarely carried through, but stubborn cases may be pressed. Under the F.L.S.A. restitution may also be secured by civil suit instituted by a worker or workers, who may act through an agent—their union if they have one. Under the statute the workers, if successful, recover twice the underpayment of wages, plus attorney's fees (Section 16-b).

Enforcement is not easy, especially if the government has to go through the process of indictment. Despite the clause that makes it criminal for a company to discriminate against an employee who complains of underpayment,⁸⁷ employees are usually afraid to stand up for their rights. Moreover, their memories may be faulty, and it may be hard to show that they worked on goods which were later shipped in interstate commerce. The staff of inspectors is relatively small, even though the Administrator is able to secure the co-operation of state inspectors, for whose services he is authorized to reimburse the state department of labor. The Administrator requires the keeping of records (Regulations, Section 11, Part 516) and their falsification is punishable (Section 15).

The statute's request that companies not cut anybody's wages to the minimum or raise hours to the maximum seems to have been complied with though to disobey is not punishable. The statute does not invalidate any state statute—the company must obey both federal and state law (Section 18).

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QUESTIONS

1. What is the relation of wage, hour, and child labor laws respectively to the problem of health? Of unemployment?
2. Why is there a need for more than one sort of labor law applying to children?
3. State the arguments for and against federal labor legislation on the basis of the child labor record. On the basis of the wage and hour record. Are the arguments the same?
4. Could the federal government serve its chief functions in respect to labor legislation by passing model laws for the District of Columbia and for government employees?
5. Does the F.L.S.A. cover most of the workers in the United States?
6. Are women's hours regulated for reasons different from men's?
7. Have minimum wages been provided for women for reasons that would not apply to men?
8. Management wants flexibility of hours. Is flexibility compatible with the purposes of hour regulation? With enforceability?
9. What resemblances and what differences do you see in the N.R.A. and the F.L.S.A.?
10. What differences are there in the present minimum-wage-fixing patterns of the states and of the federal government?

THE people of the United States have become interested successively in work-accident insurance, old-age pensions, unemployment insurance, and sickness insurance. The next four chapters will discuss them in this historical order. Each of them is a device for preserving continuity and regularity in life, that is, in income. They constitute the "social security" movement. Each of the three insurance plans was preceded by some attempt to *prevent* the thing that interrupted income without warning. Before each of the four "securities" was set up, the poorhouse typified the government's provision for the needy family that had been hit, except for the law's recognition of a possible legal claim by a man injured at work.

HISTORICAL LIABILITY OF NEGLIGENT EMPLOYERS

When America's economy was predominantly agricultural, the problems of accident or disease resulting from occupation were different from today's, not simply because machines and injurious substances were fewer and the farm boy had a strong constitution, but also because the question of relieving the effects of accident or disease was different. Men more often worked for themselves, or they did jobs by themselves, as hired men and hence could not lay blame on an employer. The connection of diseases with jobs was not so clear as now. As a result of these factors, the chance of recouping one's loss by suing an employer was a slim one.

The common law. If any person was injured in a nonoccupational accident, such as being run down by a buggy, he could sue the driver for damages and if he could prove that the driver was negligent he could collect if the driver had property. If the driver was a worker engaged at the time of the accident on his employer's business, the employer was responsible to the injured person for the negligence of his "servant."

After industrialism had made accidents on the job more frequent, some wage earners brought suit against their employers, relying on the past behavior of judges in other accident cases. However, most of the judges said that wage earners were different. They pictured the wage earner as knowing before he took the job what its general hazards were, and as knowing, once he had begun the job, whether particular workmen around the shop were trustworthy or not. If they were not, and their negligence might harm him, he could and should protect himself by quitting that job and getting another.

In thinking of the wage earner in this way the judges were exaggerating his foresight and willingness to imagine himself in an accident, his insight into conditions and men, and his economic freedom to give up the job on hand to look for one in the bush.

An injured worker, or his lawyer, could not very well bargain for an adequate settlement even by saying that the injured man would undertake the expenses of a lawsuit; for, if the matter was taken to law, the judge would require the worker first to show that he had been injured through the employer's negligence in providing an unsafe place to work, through his failure to warn of special dangers, or the like. If the worker could not show some such negligence on the part of the employer, the judge would not let the case go to the jury.

If it did get to the jury, the worker had to prove that he had not been negligent, too ("contributory negligence"); the burden of proof was thus on him. This stopped many cases.

If the case had not yet been killed, the company could then try to eliminate it by showing that the accident was due in part to the negligence of another employee (the "fellow-servant rule"). As we have seen, judges felt that the worker must surely know about his incompetent fellow employees (though the company was bound not to employ incompetents). They thus waved aside the rule that made an employer liable for his employee's negligence in the buggy accident in which an outsider was injured. But the judges did not simply say: "The fact that a fellow employee was responsible for this worker's accident does not in itself make the company liable"; they went further and said: "The fellow employee's negligence relieves the company of liability, even if it too was negligent."

If the employing company could not offer this plea, it could offer the defense that the accident had arisen out of a special condition which in-

deed the negligence of the company had permitted, but which, also, the worker knew about. The idea was that the accident was the worker's fault for not quitting the job ("assumption of risk"). This plea was often used successfully even where the neglect of the company constituted a violation of the safety law, but many judges rejected it. There were naturally disagreements among the judges on all these points, but in general they all accepted these three defenses offered by the employer.

There were isolated cases in which workers won large damages, for juries tended to be sympathetic when these rules of law let them assess damages at all. The lawyer, if he had taken the case on shares, would get half the money. There were other cases in which the necessitous family gave up its rights for a small sum; sometimes it did not know it had any rights. In the usual case, the family got nothing from the company, belonged to no sick-benefit society, and had no recourse but possible savings or charity.

Statutes which increased liability. In America, as in Great Britain, a movement was begun almost immediately to amend by legislation the harsh rule of the judges, a rule which found its first expression in America in 1842.¹ The movement concentrated especially on the anomaly of the "fellow-servant rule."² Beginning with Georgia's law in 1856, which practically abolished the rule (in railroad cases), the "employers' liability" movement by 1910 had put laws more liberal than this on the books of nearly every American state.³

The period from 1850 to 1910 was the period of most rapid expansion of mechanical production in the United States. The need for legislation to give injured workers a better chance to secure compensation was therefore increasing rapidly, and was the chief reason for the increase in remedial laws. But the legislative lag was very great; and even the more thoroughgoing liability laws left most accident cases uncompensated. Thus the period in our industrial history when machinery was an experiment ran its whole course, killing its thousands and maiming its tens of thousands, without providing compensation for more than a small fraction of its victims. A contrast is provided by Germany, which industrialized at about the same time as the United States but which enacted workmen's compensation laws for accidents as early as 1884.

The American judges during the period from 1850 to 1910 played a dual role: fairly often they construed the new liability laws strictly, to the benefit

¹ *Farwell v. Boston and W. Ry. Co.* (Mass., 1842) 4 Metcalf 49.

² The British Act of 1880, which took forty years getting on the books, was virtually confined to abolishing the fellow-servant rule. But it was followed by other amendments. A widow's right to sue had been established in Great Britain in 1846.

³ But only in Colorado was the fellow-servant rule completely abolished, by a law covering all employment.

of the employer; but, as liability laws were passed in various states, judges in other states to some extent followed the lead of these laws, tempering the rigor of the early decisions.⁴

The fellow-servant rule was modified by judges as well as by legislators, since some of them ruled that superintendents were not "fellow servants," but represented the company, and others ruled that the negligence of an employee in another department of the shop (with whom the injured person did not usually have contact) was not a valid defense for the company.

A usual legislative method of modifying the "assumption of risk" rule was to embody in the state's safety laws a provision that an injured employee was not to be prevented from getting damages by having known about a risky situation, if the company, in permitting that risk, was violating the state's safety rules.

Very little was done to modify the rule that "contributory negligence" by the injured worker barred recovery. Somewhat later a number of states adopted the principle that his damages should be reduced according to the degree of his negligence, rather than reduced to zero.

Thus statutes (a) modified somewhat the company's defenses that (1) another employee had been negligent, (2) the worker had known of the special hazard to which he fell a victim, or (3) the worker was negligent too; and in addition some statutes (b) permitted suit by the widow or children of a worker killed by accident, and (c) forbade the company to require the worker to waive his legal rights as a condition of taking the job (in most states the judges had forbidden this anyway).

While some safety laws before 1910 were aimed at occupational diseases, suits for damages because of occupational diseases were practically unknown. The exception is found in the Massachusetts case in which, in 1910, it was held that "injury" in the liability law included disease.

The liability law was inadequate in assuring money to the majority of injured workers chiefly because accepted law permitted recovery from someone only if he had been at fault—for instance, if an employer had been negligent in an accident case. Its inadequacy is suggested by the results of a survey⁵ of cases in which recovery of damages seemed likely, namely, cases of fatal accidents to married workers. Every third case was unrelieved under the New York liability law, and only one in five got more than \$500. New York lawsuits lasted from six months to six years.

A shocking revelation was that, while employers complained that their accident insurance rates were already too high, actually—in ten insurance

⁴ I. M. Rubinow, *Social Insurance*. Henry Holt and Company. New York. 1916. Pp. 166-7.

⁵ Harry Weiss, "Employers' Liability and Workmen's Compensation," Chapter 6 of Elizabeth Brandeis, "Labor Legislation," in Vol. III of *History of Labor in the United States, 1896-1932*. The Macmillan Company. New York. 1935. Pp. 573, reporting. New York State Employers' Liability Commission, *First Report* (1910), pp. 20-21.

companies—only 28 per cent of the money which the employers paid in reached the workers.⁶ Though insurance was not compulsory, and many workers failed to get their money because the employer was insolvent, yet many employers did insure themselves against accidents to their employees. The insurance company would, wherever possible, contest the case, hoping to wear the worker down till he settled. Thus litigation expenses as well as office and promotion costs ate up the other 72 per cent of the money paid by employers, an amount which might have been used to relieve those who got nothing and to raise the benefits all around.

MOVEMENT FOR WORKMEN'S COMPENSATION

Some advocates of social security grew tired of the patchwork methods by which employers' liability was slowly increased. Some urged the advantage of giving one legislature—Congress—jurisdiction over all these labor matters as an effective answer to the usual argument advanced by employers that if the state law were made stricter they could not compete with companies in other states and would either have to lay off workers or move out of the state.

Others, noting that even the strictest liability law left unaided the workers who could not show negligence by the company, advocated workmen's compensation such as the European countries had. This meant an obligation by the employing company to pay money, roughly in proportion to the seriousness of the injury, to the injured worker and his family, without regard to who caused the injury ("liability without fault"). The company was to pay premiums to an insurance carrier, which would take over the paying of the necessary money whenever someone was injured, as it did in a more limited way under liability insurance.

The movement for workmen's compensation became noticeable about 1908. Important elements in the education of popular opinion in the direction of compensation were: the existence of compensation laws in nearly every European country; a primitive compensation law covering federal employees which Theodore Roosevelt got from Congress in 1908; the Pittsburgh Survey by the Russell Sage Foundation; the findings of commissions set up by legislators who were trying to put off decision on this novel proposal.

While a typical American objection to the proposal for workmen's compensation was the broad one that it was a European institution, the objection of organized labor was, if anything, still broader. They were against government interference in labor matters (except anti-injunction laws). As for the working man himself, those who had been injured and had secured

⁶ E. H. Downey, *History of Work Accident Indemnity in Iowa*, reported in Wejss, *op. cit.*, p. 574.

substantial jury awards thought the existing system was better than the proposed one, which set compensation at a relatively low rate; injured workers who had gotten small settlements knew their cases were closed; workers in general did not expect to get hurt in the future.

The employing companies disliked the proposal and fought it, but their attitude was strongly colored by that of the insurance carriers. Moreover, in the hearings of the legislative committee a company's views were probably presented by employers' association executives, who may even have exaggerated their client's opposition. Companies generally, and correctly, foresaw that the size of benefits and premiums would rise in the future, and that accident compensation would make it easier to introduce other social security legislation.

The carriers which wrote employers' liability insurance were bitterly opposed to compensation. As it turned out, their business increased enormously as a result of compensation. But the insurance executives may have shared the nervousness of business executives in general about government intervention. In addition, they may have foreseen that it would occur to employers to form co-operative associations to insure themselves and that states would set up state insurance funds, although the competition from these sources has never been too serious.

As with all such reform laws, the proposal had been up for consideration for years. A federal report on the German system was issued in 1893. In 1897 Great Britain adopted compensation and in 1898 a bill was introduced in New York. In 1902, with help from David Lewis, who later as a congressman was identified with unemployment insurance, Maryland passed a rather vague and limited law, declared unconstitutional in 1904 because it deprived the parties of trial by court and jury. We have already mentioned the 1908 law for federal employees. Like the Maryland law, a Montana law of 1909 provided for splitting the premiums between employer and employee. The fund into which the premiums went was to provide compensation as a minimum payment, but the worker, when injured, could elect to take his chances at a higher sum instead by suing under the employers' liability law. The state supreme court held the plan unconstitutional.

After 1910, compensation by state law spread from state to state—much faster than has any other labor law not backed by an offer of federal funds. It became the fashion. In 1909 three state legislative commissions were voted and the A.F.L. ceased to oppose the reform. In 1910 eight commissions were created. In the same year New York passed a compensation law which in 1911 was declared unconstitutional under the New York constitution by the state Court of Appeals. In the intervening time ten more states had passed laws and twelve others had appointed commissions to study proposals. The years 1912 and 1913 saw eleven more laws and seven more commissions,

besides a second New York law, passed this time through an amendment to the state constitution. In 1915 and 1916 nine states and three territories passed laws and the Federal Act of 1908 was improved. Since then there have been gradual additions to the list, and frequent amendments of the existing laws. In 1940 there were compensation laws in every state but Mississippi. Congress had passed a law for federal employees, one for longshoremen, and one for the employees of private industry in the District of Columbia. It had also passed a *liability* law for railroad workers. Four laws had been passed by legislatures of dependencies: the Philippines, Puerto Rico, and the territories of Alaska and Hawaii.

COMPENSATION TODAY

Structure. As to the basic structural elements of compensation, the National Conference on Labor Legislation has made the following recommendations:

1. *Compensation*.—Compulsory.

2. *Administration*.—Commission, not court.

Cost of administration to be defrayed not by legislative appropriation, but by an assessment on insurance and self-insurers. Administrative cost of State funds to be taken directly out of insurance premiums or income.

3. *Insurance*.—Exclusive State insurance fund.

Severe penalties on employers not complying with insurance requirements desirable. . . .

15. *Procedure*.—Informal, "administrative," with adequate provision in the law for the commission to have the power to check "ambulance chasing," regulate attorney's and doctor's fees, and so on. Appeals from decrees should not be allowed except on questions of law, and should be carried direct to the highest court.⁷

In contrast to these norms, after American compensation had been going nearly thirty years, of fifty-four American compensation laws thirty-three were still elective rather than compulsory, four had no insurance requirement, all but eight permitted private insurance, and six had no commission to enforce them.⁸

Elective laws. The early court decisions against compensation did not stop the legislatures from passing compensation laws. But the New York decision against a compulsory law seems to have influenced many states to adopt an elective or pseudo-elective law, avoiding, however, the "double liability" of the elective Montana law. Moreover, some felt they were playing

⁷ U. S. Division of Labor Standards, *Proceedings of the Second National Conference*, at Asheville, 1935. Government Printing Office, Washington, D. C. 1936. Pp. 81-2.

⁸ Walter F. Dodd, *Administration of Workmen's Compensation*. The Commonwealth Fund. New York. 1936. Pp. 35, 37, 84.

safe, constitutionally, when they limited the law to hazardous occupations. These laws happened to coincide with the interests of the "nonhazardous" employers. Similarly, employers in general preferred "elective" laws and the advocates of compensation took what they could get. As a result, up to 1917 only one-quarter of the laws passed were compulsory. In that year the federal Supreme Court held elective system, compulsory system, and monopolistic state fund alike constitutional, and it was presumed that state courts would follow this lead. Yet, of the laws that were enacted after 1917, only one in four was compulsory. Though five industrial states have since changed to the compulsory type, only fourteen states have it; the seven federal and territorial laws are compulsory; so, altogether, two out of five American laws are compulsory.⁹

"Elective" laws exercised a half-compulsion. Employers' liability laws had not abrogated the employing companies' common-law defense completely. Because the elective compensation laws now did so, a company which elected to stay out of compensation was more likely to have damages assessed against it in those cases where it was shown to have been negligent. The company which elected compensation was, in effect, exempt from suit. Elective laws usually cover all companies who have not definitely chosen to stay out. A depression causes firms to stay out, as an economy measure.

Insurance. Compensation puts the obligation to pay on the employing company, which usually retains an insurance company, or carrier, to bear the risk. Most early American laws required insurance, but their provisions were rather weak. They have since been strengthened. Now the only laws without some insurance requirement are those of Alabama, Louisiana, Alaska, and the Philippines. Adequate protection for the workers calls for compulsory insurance. Without it, many injured workers get nothing because their employers are insolvent. Moreover, in a case of permanent disability or death the award usually is not a lump-sum payment but long-continuing weekly payments. The employer is more likely to become insolvent during the period than is the modern insurance company, which is subjected to some check-up in most states. It must be added that a good many insurance companies have failed, too, leaving workers' families stranded.¹⁰ Self-insurance is permitted in almost all states. Typically the commission requires that the company post a bond if its balance sheet does not seem to guarantee solvency over a long period. One of the chief problems of compensation is getting small employers to insure. In one month in 1939 New York, for example, obtained two hundred convictions for failure to insure.¹¹

⁹ *Ibid.*, pp. 747-50.

¹⁰ *Ibid.*, pp. 540-550.

¹¹ U. S. Division of Labor Standards, *Progress of State Insurance Funds under Workmen's Compensation*. Bulletin No. 30. Government Printing Office. Washington, D. C. 1939. Pp. 17-18.

A number of the early state laws set up insurance funds which were either given a monopoly on the business by law or else made competitive with private carriers. These two systems were Insurance Enemies Nos. 1 and 2. The carriers' Enemy No. 3 was the mutual insurance company, owned by the companies which took out policies with it. The trend toward state funds and mutuals was sharpened by the fact that the carriers predicted such high costs under compensation that it began to seem worth while to some businessmen to economize by some new method of insurance.¹² Monopolistic state or mutual systems promised to be economical, especially because of their avoidance of promotion expenses. But the carriers managed to divert the movement for state funds. There are only seven monopolistic funds and eleven competitive, about the same number as there were twenty years ago.¹³

One of the chief functions of state funds, monopolistic or competitive, has been to provide insurance for the bad risks which other carriers reject.¹⁴ An alternative solution to the problem of the bad risk is used in several states: they require all carriers operating in the state to share the burden by a process of reinsurance.¹⁵

The state funds have, in fact, turned out to be more economical than others. The following figures estimate what per cent of all premiums collected is paid out as overhead expenses, in average cases:

1. Ordinary insurance companies (accepting selected risks), about 40 per cent.
2. Mutual companies (selected risks), from 10 to 25 per cent.
3. Competitive state funds (accepting all risks), from 10 to 20 per cent.
4. Exclusive state funds (all risks), from 5 to 10 per cent.

That is, if all compensation had been in exclusive state funds in 1937, employers might have saved \$70,000,000 that year, or benefits might have been increased by that much.¹⁶ For this reason, among others, the A.F.L. endorses exclusive state funds.¹⁷

cf. pp. 16-18. During the first 10 months of 1931, 2,240 employers in New York City were prosecuted for evasion of the compensation law; 2,136 of them were convicted. *The New York Times*, November 23, 1939. Cf. Dodd, *op. cit.*, pp. 517, 593-605.

¹² I. M. Rubinow, *Quest for Security*. Henry Holt & Co. New York. 1934. Pp. 137-38.

¹³ U. S. Division of Labor Standards, *op. cit.*, pp. 2-3. See this bulletin for further information on insurance methods and problems.

¹⁴ *Ibid.*, pp. 14-16. Dodd, *op. cit.*, pp. 567-73.

¹⁵ See C. W. Hobbs, *Workmen's Compensation Insurance*. McGraw-Hill Book Company. New York. 1939.

¹⁶ U. S. Division of Labor Standards, *op. cit.*, p. 36. "Expenses" includes profits, in the case of ordinary insurance companies. Many of them had large negative profits (losses) during the depression. These apparently continue to do a losing compensation business in order to help get company orders for other types of insurance. *Ibid.*, p. 19. A number of estimates of expense are collected in Dodd, *op. cit.*, pp. 554-59.

¹⁷ A.F.L., *Report of Proceedings of the Convention, 1937*, p. 312.

The economy advantages of the exclusive state fund have in the past been offset to some extent by several factors: among others, (1) "a tendency toward political interference with the fund, especially when the state administration was opposed to its continuance"; (2) "payment of low salaries with the consequent loss of able leadership"; (3) "narrow interpretation of statutes in an effort to demonstrate their conservatism to employers"; and (4) "functions narrowly construed, partly due to limitations of expenditures by state authorities."¹⁸

Adjudication. We saw in an earlier chapter that the National Labor Relations Board was arousing interest because it was acting as an administrative tribunal, giving content to a vague law in the process of considering whether to accept complaints against firms and in the process of holding hearings on complaints and issuing decisions. The workmen's compensation commissions have been operating in the same way for about thirty years. As with the National Labor Relations Act, many of their cases are settled out of court, on the basis of previous decisions or perhaps ignorance of those decisions, and on the basis of the workers' power to wait and see a contested case through to an adjudication by the board and perhaps later by the courts. The main things that mark off the handling of the cases by administrative tribunals from their handling by the courts are (1) the specialized knowledge of the people in the administrative division, (2) the more flexible rules of evidence, and (3) the greater speed in handling, if the case is not appealed to the courts.

The compensation rules are still being interpreted by boards and courts and there is an endless procession of contested cases. There is great diversity in the ways in which states handle claims and adjudicate the contested ones.¹⁹ They may leave the whole matter to the courts or to settlements made in order to avoid going to court. Six states still do this. In states with exclusive funds, the decisions are to a large extent made by the fund administrators. New York, unlike other states, requires a hearing even on uncontested cases, to make sure that everything is straight although this policy involves delay and extra expense. Some states have hearings conducted by subordinates, some by individual members of the board. The full board will usually hear appeals. Sometimes the latter has no other function, but sometimes it is the industrial commission which administers all labor laws. Some states treat the board as a court and allow appeals directly from it to the

¹⁸ Weiss, *op. cit.*, p. 587. It is argued against state funds that they are socialistic and also compete unfairly because they are tax-exempt. The latter statement is untrue for some states and is a negligible factor in others. State funds seem to pay benefits no less promptly than private companies do, and to do no less toward accident prevention. U. S. Division of Labor Standards, *op. cit.*, pp. 26-31.

¹⁹ A complete description of these ways is in Dodd, *op. cit.*, Chaps. 3-9.

highest state court; others require appeals first to the lower or intermediate courts.

Boards try to simplify procedure so that it will be unnecessary for the worker to have a lawyer. At hearings much depends, therefore, on the presiding officer. Many unions employ agents to look after the rights of their members. One of these agents, after becoming a compensation board member, described his previous activity as "scabbing on the lawyers." He reported that fortunately a union agent was as good as a lawyer in most cases.

Scope. The 1935 Conference recommendations as to the scope of the ideal compensation law were:

4. *Coverage.*—All industries and all employees, including State and municipal. No exemptions of small employers or non-hazardous industries. The right of the employee to waive compensation prohibited. Extra-territorial workers²⁰ to be included. In this connection, reciprocity and cooperation between States is very desirable. All employees excluded from State jurisdictions by reason of being subject to Federal jurisdiction to be covered by a Federal Workmen's Compensation Law.

5. *Injuries.*—Define injuries to include occupational diseases. "Blanket" coverage of occupational diseases rather than "schedule" coverage.

6. *Waiting Period.*—Not more than 7 nor less than 3 days.

Exceptions. We have seen that elective laws give employers a chance to exempt themselves. Almost all laws have exempted agricultural and domestic workers, either directly or by excluding small employers. This was justified by the allegation that their hazards were not great. It was later shown that they were great, but it is still argued, against including them, that it would be hard to administer a law that applied to the mass of farmers and other small employers. This argument may have had some validity in the beginning years, but then as now it disguised the legislators' fear of resentment by large groups of voters—farmers and householders.

Public employees are often omitted. Congress in effect began American compensation with a law applying to some federal employees in 1908. The early state laws rarely included city and state employees, but twenty-nine of the present forty-seven state laws include some or all of them. Half the laws have provisions that include the employer with only one helper (except farm and domestic help). The others have minimums ranging from two workers in Oklahoma to sixteen in Alabama. No state compels the working employer to insure himself as well as his employees.

A few states still restrict compensation to hazardous employments and so fail to cover selling, clerical work, and professional work. Some states permit their commissions to exempt a worker from the compensation law

²⁰ Sent out of their home state on a job.

if he has a defect which makes him liable to accident and so makes it hard for him to get a job unless he can waive his rights.

The federal workmen's compensation law covers only longshoremen—not sailors, railroad, bus, or airplane workers. When Congress put the longshoremen and harbor workers (when working on ships) under a federal compensation law, the sailors' union was unwilling to give up the sailors' right to sue under the federal employers' liability act (limited to negligence cases) and so sailors were excluded. Similarly the railroad workers are (1940) still under a liability law because a number of influential unions were lukewarm about compensation. Presumably, when the railway men are put under compensation, the interstate bus and air workers will be too. Meanwhile employees of those companies who are not directly engaged on interstate work are covered by the state law, whatever it is.

All in all, one out of every four wage earners in the United States, it has been estimated, has only "liability" rights and no "compensation" rights.²¹

Occupational diseases. Occupational diseases were given little attention in the early compensation laws and neither included nor excluded. In two states the word "injury" was interpreted to include the effects of occupational diseases. In recent years amendments have been passed to cover diseases caused by occupation, but fewer than half the American laws contain such a provision. Of these about half cover a list of specified diseases. In the other half there is a sweeping clause in the law which leaves it up to the board to decide what diseases are actually traceable to the employment.²²

Waiting periods. In the typical state, an accident that takes a man away from work less than a week is not compensated; this week is the "waiting period." This rule excludes a large number of accidents from compensation, for the majority of them disable for only a few days. The injured worker is usually able to get along somehow (though he may not get as good medical treatment as he would have if the accident were compensable). Another argument for the exclusion is that the compensation system would be swamped by the small cases. At first, when fourteen days was the usual waiting period, it was argued that the worker would not be tempted to malingering by stretching a two-day injury into a seven-day one if he knows that he will not get any compensation for the first fourteen days of the injury. The waiting period is now seven days in most states and less in some. This change has increased the danger of malingering somewhat, but this is presumably checked by the vigilance of the insurance carriers.

²¹ Weiss, *op. cit.*, p. 594. Cf. Dodd, *op. cit.*, pp. 746-83.

²² Cf. Rosamond Goldberg, *Occupational Diseases in Relation to Compensation and Health Insurance*. Columbia University Press. New York. 1931; Hobbs, *op. cit.*

The waiting period used to mean that a worker who was laid up ten weeks got compensation only to cover eight or nine of them, but the majority of laws now permit the workers in these more serious cases to collect for the waiting period after it is clear that their injuries are serious.

Benefits. Benefits paid are wage replacement and medical benefit. The former are paid in cases of death, permanent total disability, temporary total disability, and permanent partial disability. Instantaneous death requires no medical benefit.

Rates of benefit. The typical compensation system provides for an occasional lump-sum settlement, but it normally employs the system of weekly payments, plus medical attention. A few more generous laws allow two-thirds of the worker's past wages, but most allow half. Thus the criterion in the usual law is the accustomed standard of living of the given family. The criterion of need is introduced, however, by setting a maximum and a minimum per week, so that no compensation family is extremely far above or below the average compensation family. A handful of states base awards entirely on need. A handful, also, use the lump-sum method in every case.

Nearly all nonfatal cases are similar in that for some weeks the worker needs and can expect a proportion of his past pay, plus medical attention, while he is laid up. If he can never work again (permanent total disability) he may expect these payments to continue for the rest of his life—and in some states they do continue. Usually he recovers sufficiently to go back to work in a few weeks or months (temporary total disability), when the payments stop. If his temporary total disability ends, but he shows the effects of his injury and cannot earn as much as before, he is said to have a permanent partial disability. He then gets a fraction of what he got before. A difficult question is (assuming that the state's provision for total disability is just), what fraction? A number of points must be considered:

1. Does the physical injury deserve a recompense, aside from probable wage loss? (More so if a disfigurement shows?)
2. Does the injury lessen the ability to earn in the worker's present job?
3. Since he may some day have to shift jobs for other reasons, does it impair his earning ability in jobs in general?
4. Is the wage earner young enough to adapt himself to other jobs fairly readily, in case his old job is threatened?
5. If his compensation is to be based on his weekly pay, is the pay he has been getting representative of his working life? Perhaps he is only an apprentice, or has been working part time in a period of unemployment. This point applies to cases of death and permanent total disability; its "part-

time" aspect also applies to temporary total disability, either by itself or as the predecessor of permanent partial disability.

Most of these considerations have had to do with the problem of distinguishing one worker's position from that of another. There is also the problem (implied in 2 and 3) of rating different sorts of injuries, either in respect to the worker's particular position (2), or in its average or general effect on earning power (3).

Almost all states have attempted to solve these problems as to permanent partial disability by rating injuries only *in general*. That is, they have awarded the same fraction of his wage to a structural steel worker and to a shoe cutter, each of whom has lost a leg. The other considerations listed are disregarded by all but a few states, a procedure endorsed by the Conference recommendation because of its "administrative simplicity."

Maximums and prices. An important feature of American compensation laws has been the setting of maximums, not only on the weekly rate, but on the total amount to be recovered, usually by setting a maximum number of weeks of benefit. This leaves the family with no income after the maximum is passed. Where there is a total-dollars maximum, the cases with rather high weekly payments receive fewer weeks of income than others do. This has put the fatal and permanent-disability cases at a disadvantage compared with the temporary which did not reach the maximum. However, the maximum periods for permanent total disability have been gradually raised, usually to ten years, and in some cases to "life." Meanwhile the death benefits, which started by being higher than the disability benefits, have not been raised so much. The disability payments have been relatively increased because it has been found that the household expenses are greater when a worker is disabled than when he has died. As to death cases, the better type of law now follows the pattern of the Conference recommendation: the widow receives 35 per cent of her husband's wage rate, with a smaller amount for each minor or incapacitated child, up to a maximum of two-thirds of the wage rate. If the widow remarries, she receives a lump payment amounting to two years' allowance. If she dies, her allowance stops.

Even such an "ideal" system of payments in fatal cases, like similar "ideals" in disability cases, means a regression in living standards for the family. For one of the more liberal states, New York, it was estimated that in 1930 benefits were less than a third of what the deceased worker would have earned during the remainder of his life.²⁸ Commenting on the Conference recommendation, one labor leader urged that compensation equal weekly wages, not half or two-thirds of them.

²⁸ Weiss, *op. cit.*, p. 609.

If compensation did equal wages, the family of the injured worker would find itself among the more secure worker groups, for unemployment would affect it only if a depression were sufficiently severe to bankrupt the employer and the insurance carrier. Such a family would have not only this steadiness of income, but also, in a depression, the advantage of low prices. This supposes, of course, that the weekly earnings on which the compensation was based are not the low earnings of the current or past depressions.

Most laws provide maximums and minimums of weekly compensation. Since these are fixed by statute and are seldom changed, they, too, have a considerably different meaning as prices and wages fluctuate, either during a business cycle or over longer periods. A weekly maximum of \$15 means that, in a state which makes allowances of half the worker's past average earnings, workers who had averaged, for instance, \$20, \$30, and \$40 would get allowances of \$10, \$15, and \$15, respectively. The second man's relative superiority over the first is continued, but not the third man's over the second. Similarly, the law will set a bottom limit, presumably high enough for subsistence for any family.

When prices and wages are rising, the weekly maximum limits the compensation of larger and larger numbers of the new cases. Unless prices later fall, these cases bring down the average award's adequacy to provide subsistence. A similar whittling process takes place where laws fix a maximum limit to the total number of dollars that may be paid in any one case. Similarly, when wages rise, fewer cases are affected by the legal weekly minimum, and, if prices rise too, the awards just above the minimum may have less purchasing power than they would have if neither wages nor prices had risen. When wages and prices fall, the effect is reversed.

Changes in wages and prices and failure to change maximums can be observed not only over a business cycle, but over longer periods. They affect one's estimate, from the point of view of the worker, of the improvement of the compensation system since its inception. Between 1914 and 1930 wages rose, but legal weekly maximums lagged behind this rise, so that "the average injured worker of 1930 received a smaller portion of wage loss in his weekly compensation." But prices rose, too, and he "also received less in weekly compensation measured in terms of its purchasing power." However, the other legal maximums were improved—the grand total amount receivable, or the total number of weeks of payment permissible—and so "in total benefits the injured worker of 1930 was probably about as well off as the injured worker of 1914." ²⁴

Medical benefits. American compensation laws have all included some provision for treatment of injured workers. This provision was always sub-

²⁴ Weiss, *op. cit.*, p. 605. The average here, as always, hides a great variety of situations, the workers in the top states being treated very much better than those at the other end.

ordinate to the provision of money benefits, but it has grown in importance. At the beginning of the 1920's medical benefits cost the insurance carriers about 25 per cent as much as money benefits did; at the beginning of the 1930's about 40 per cent.²⁵ It is likely to grow further, when more laws are amended to provide treatment without an upper limit in terms of dollars or of time. Until recently there were only eight states which had no such limits.²⁶

The doctor can decide when treatment is to cease, when the carrier is to stop paying out for these medical benefits. He makes decisions about money benefits too. In a case of temporary disability, his decision that treatments are to end means that money payments end at the same time. If disability is permanent but not total, the doctor may be called on to give his opinion concerning the extent to which it will impair earning power.

In most compensation claims the employee is dealing with an insurance company, usually nongovernmental. Private insurance companies generally employ doctors in industrial communities whom they assign to treat injured employees. The employee is rarely able to choose his physician except at the risk of paying for treatment himself. The carrier, on the other hand, finds it profitable to employ its own doctor, not only because he will cease treatment as soon as possible, but also because, in cases of dispute, he will have a monopoly of the medical evidence. These powers are often abused. Even if the state employs doctors to check up, they usually enter the case rather late, and they may also be reluctant to find fault with the diagnosis of a professional colleague.

Compensation medical practice thus has its share of general medical evils. Workmen are as ignorant as most people about what constitutes good medical service, and they are under an additional handicap in that the compensation law is complicated and difficult to understand. Doctors anxious to get more patients may bribe foremen to send injured workers to them. They may steer their regular patients to specialists who happen to work for carriers and so may be willing to send routine compensation cases their way.²⁷ A cruder method than this is the splitting of fees with a layman or doctor who refers a patient. Medical ethics bans this practice, but it flourishes.

Some people feel that such abuses would be avoided if the worker were allowed to choose his own physician. But in compensation cases in which such physicians appear they, too, are likely to show bias—in favor of their patients' claims. Another suggestion of meeting the problem is to threaten to debar from compensation practice any doctor who can be shown to have abused the compensation system. If this latter suggestion were rigorously

²⁵ Weiss, *op. cit.*, p. 608; cf. Commons and Andrews, *Principles of Labor Legislation*. Harper & Brothers. New York. 1936. P. 245.

²⁶ Dodd, *op. cit.*, p. 52. Three territorial and the three federal laws also set no limits.

²⁷ New York State, *Legislative Document No. 49* (1929), p. 131.

applied, it would make little difference whether the employee or the carrier chose the physician.

In New York, after a series of investigations²⁸ of compensation abuses, an amendment in 1935 set up such a plan, recommended by a committee of doctors. Only a certain panel of doctors and clinics were given compensation licenses, which might be rescinded if the privilege were abused. It was to be the worker's right, and not the carrier's, to choose from among these. The employer was to select a doctor only if the worker failed to. The employer could make recommendations to the worker only under regulations of the state Department of Labor. Supervision was to be shared by medical societies and the Department, assisted by an Industrial Council made up of representatives of capital, labor, and medicine. Among the offenses which may cause loss of the compensation-practice privilege is not only fee splitting but also fee reduction in order to get the business. This price maintenance was partly aimed to keep up the quality of service, which was to be kept up also by direct methods such as bans on work by nurses, unless under the direction of a competent practitioner. Disputes over fees and other matters were to be arbitrated.

Rehabilitation. Medical treatment, however good, may leave the worker unable to return to his former work. He may be given training in some new trade. This is called vocational rehabilitation. It often helps the injured worker to get his muscles functioning again and restores his confidence and hope. Under the stimulus of a federal subsidy, begun in 1920, and increased from time to time, the states have undertaken rehabilitation. To some extent they have laid the cost on employers, usually by the indirect method of collecting from companies or carriers the compensation of workers who are killed and leave no heirs. This money is spent for rehabilitation, the rest of the cost coming from the taxpayers. Usually the worker is told that his permanent-partial-disability benefit will not be reduced if he increases his earning capacity through rehabilitation. This increases his incentive to retrain. Employers are usually reluctant to employ handicapped persons, since they are more likely to have accidents and since, moreover, a second accident is more likely to make them wholly unfit for work. This reluctance has been reduced in some states by assigning some of the special funds just mentioned to pay compensation to persons who are injured a second time. In those states the employer pays as much as if the accident were the first one and the fund pays the rest. For instance, if a second hand is lost, the employer pays only as much as if it were the first hand.²⁹

²⁸ Summarized in Dodd, *op. cit.*, pp. 445-69.

²⁹ Cf. E. L. Bowers, *Is It Safe to Work?* Houghton Mifflin Company. Boston. 1930. Pp. 110-31; and H. H. Kessler, *The Crippled and Disabled*. Columbia University Press. New York. 1935. Pp. 122-29, 278-94.

ACCIDENT PREVENTION

For about sixty years the American states have been passing laws designed to prevent accidents in factories, mines, and so on, as well as sanitary laws aimed to prevent disease.³⁰ Today the typical law gives the state Department of Labor power to frame safety codes for different industries.³¹ In some cases there was an additional motive because the public's safety or health was involved too, as on railroads or in restaurants. The federal government has aided the movement, for instance by setting an example in its regulations governing mines located on public lands.³² Hour laws contribute to safety and health, as we have seen.

Workmen's compensation laws have probably increased the interest of legislators in accidents and so have caused improvements in preventive laws. Compensation has increased the interest of employers, especially since insurance companies inspect their premises and may refuse insurance if they are very unsafe, or offer them a rebate if their "merit rating" shows that they are safer than the general run of establishments. The safety drives often instituted are somewhat more helpful if they result in physical improvements such as more space to move in; somewhat less helpful if they confine themselves to exhorting forgetful foremen and workers.

It has been said that compensation, for these reasons, reduces accidents. It may be doing so, but this effect is lost in the general upward movement of accidents since compensation began. Some of the reasons given for this upward movement are the use of fewer skilled and more unskilled workers, the concentration of employees in larger numbers, the use of more and larger machines, the handling of larger and heavier units of material, and the increase in absentee ownership which seeks profits without regard for consequences.³³ However, large plants are usually leaders in the "Safety First" movement and often succeed in reducing accidents where smaller plants do not.³⁴ It is estimated that half or three-quarters of industrial accidents could be prevented with little expense.³⁵

³⁰ See Commons and Andrews, *op. cit.*, Chap. 4, "Safety and Health."

³¹ See John B. Andrews, *Administrative Labor Legislation*. Harper & Brothers. New York, 1936; or his *Labor Laws in Action*, Harper & Brothers. New York, 1938.

³² The Walsh-Healey Act of 1936, whose hour and wage provisions were mentioned in the previous chapter, included a requirement that work on government contracts be conducted safely.

³³ E. H. Downey, *Workmen's Compensation*. The Macmillan Company. New York. 1924. P. 3. He sums up by saying that if men were like machines there would be no accidents. *Ibid.*, P. 7.

³⁴ National Industrial Conference Board, *Medical Supervision and Service in Industry*. National Industrial Conference Board. New York. 1931. P. 43. Reporting of accidents is fuller than it was, so that their statistical increase is somewhat larger than their real increase. Some of the results of increased industrialization can be seen when there is a cyclical upswing of production, which increases the number of accidents per man-hour of work.

³⁵ Kessler, *op. cit.*, p. 20; H. W. Heinrich, *Industrial Accident Prevention*. McGraw-Hill Book Company. New York. 1931. Pp. 46-47.

There are several specific ways in which the institution of workmen's compensation fortifies state and safety laws.

1. Reports on the causes of accidents point to situations that need change and to specific factories that need it. Such reports would be more useful if they were uniform for the whole United States.

2. A few compensation laws penalize the employer if an injury occurs because of his failure to comply with a state safety law or regulation. Usually he has to pay 15 per cent extra compensation. In California it is 50 per cent, and the company and not the carrier must pay it; Massachusetts has the same rule, but the extra payment is 100 per cent. In Nevada, the state collects the penalty money instead of awarding it to the injured worker. The penalties on employers are said to have improved their compliance with the safety rules but to have caused them to fight proposed new safety rules, because they might increase compensation costs.³⁶ These compensation laws also warn the worker (if he reads the notices) that he will receive *less* compensation if he is injured because of his own failure to follow the state rules.

3. Insurance companies usually charge higher or lower premiums to different employers in the same industry and state, depending on whether their record shows many accidents or few in the past three or five years. This "merit rating" calls employers' attention to the problem and stimulates some of them to take preventive measures. Self-insured companies, too, have an incentive to reduce accidents. Different trades are, of course, charged different premiums depending on their riskiness, but trade associations rarely unite on safety drives which will lower the premium of all the companies in the trade.

RELATION OF COMPENSATION TO OTHER SECURITY LAWS

The problems of social insurance in the field of work injuries foreshadow problems in old-age, unemployment, and health insurance. Advocates of pensions, for example, could learn from compensation that the workers' needs have to be dramatized. In the case of unemployment, this publicity job was done in the 1930's by a depression deeper than usual. In discussions of work injuries and unemployment, but not of old age and general health, there has been present the notion that employers were at fault and also that they had power to prevent, a notion that led to "merit rating" in assessing premiums against employers. The fight of the insurance carriers against compensation prepared them to fight against other sorts of social insurance; em-

³⁶ Said of Ohio, in United States Bureau of Labor Statistics, Bulletin No. 577. 1932. P. 105, quoted in Dodd, *op. cit.*, p. 707.

employers resisted all sorts, of course, as they did other protective legislation. The opposition of both employers and carriers to government assistance was less than their opposition to social insurance, which would affect them directly. Compensation payments have been kept irregular and at a low average by the reluctance of each state legislature to outdo the others. This irregularity brought about, not the replacing of state compensation laws by one federal law, but the use of federal power in connection with old age and unemployment.

A characteristic feature of work-injury compensation which was omitted from unemployment insurance and old-age insurance is the use of private companies as insuring agents. Compulsory, exclusive governmental funds were provided—in the case of old age, a federal fund. Thus the method of handling unemployed and aged workers' claims is even further removed from procedures which involve lawyers and judges than compensation methods are. In the case of old-age and unemployment *assistance* it is removed even more definitely than in the case of old-age and unemployment insurance. The traditional exemption for small firms is abolished in old-age benefits; exemptions for agriculture and domestic service remain.

Waiting periods in unemployment assistance and insurance are analogous to those in compensation. Old-age and unemployment insurance, like compensation, aim at partial wage-restoration, and they, too, introduce the criterion of need by having maximum and minimum benefits per week, the meaning of which fluctuates with prices and wages. A worker has to be insured for some time to have a valid claim to old-age or unemployment benefits; this is not true of compensation. Old-age benefits are like some compensation laws in continuing until death; unemployment insurance is like some other compensation laws in setting a maximum number of weeks during which benefit can be drawn on one claim.

Some day the United States will have to solve these problems for health insurance, too. Health insurance, moreover, is an extension of workmen's compensation and shares with it the medical problems of giving good treatment and giving it long enough but not too long.

The fundamental difference between compensation and later security laws is that in the matter of work injuries alone the working class started with the bargaining power of a recognized legal right against the employer.

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QUESTIONS

1. Would higher wages be a substitute for workmen's compensation? For other social insurance or social security laws?
2. Why was a worker a hundred years ago legally able to claim money for a work-injury but not for unemployment?
3. Which was the greater change—to "liability" or, later, to "compensation"?
4. What were the forces making for and against workmen's compensation?
5. Are employers compelled to come under compensation? To insure themselves?
6. What is needed to make the coverage of compensation complete?
7. Is workmen's compensation insurance like private insurance? Do the

benefits from one or both depend on need? Are there maximums and minimums in both cases? Are benefits in both cases proportioned to the income level of the different families?

8. On what basis is the damage done reckoned?

9. Why is the physician's position in the compensation system a delicate one?

10. Will health insurance, if it is enacted, replace compensation?

STATE ASSISTANCE AND FEDERAL PROPOSALS

WHAT can government do to aid the aged who can no longer support themselves? It can try to make the children support their parents.¹ It might perhaps create special jobs adapted to old people and carrying no more stigma than the "watchman's job" now has. It would also be possible for the state to sell annuities, made cheap by a subsidy, to workers that wanted to buy them, but European experiments with this method indicate that few would avail themselves of the opportunity. The experience of Wisconsin, which has such annuities for sale at present, also bears this out. The response was likewise small in Massachusetts, after 1907, and in New York, after 1938, when the two states enacted legislation authorizing the sale of "savings-bank life insurance," which was expected to replace the expensive small-scale "industrial insurance" policies usually bought by workers.

If government is to set up a system which will effectively ward off destitution from aged workers by means of pensions of some sort, it has three main alternatives. (1) It could promise a pension to everyone, perhaps the same amount to all, to be paid out of the treasury. (2) It could tax workers, and perhaps employers, and use the proceeds to pay benefits (annuities) to

¹ One way is to refuse assistance to old people with living children. This refusal is much less usual in European assistance laws than American. Paul A. Douglas, *Social Security in the United States*, Rev. Ed. McGraw-Hill Book Company. New York. 1939. P. 8. The government may try to keep old people on the job, by exempting them from wage legislation. See Chapter 32.

the workers, presumably paying bigger installments to those who had contributed more. Government might also contribute from its own funds. (3) Finally, it could confine the pensions to persons seriously in need, drawing the money from the treasury. In the cases in which the treasury paid something, the government might raise this amount by means of progressive taxes. But it need not; there is a great variety of ways in which this tax burden could be distributed.

No government has ever felt prosperous enough to undertake the burden of general pensions. The other two methods are both widely used. In the United States, Congress voted in 1935 to have the two supplement each other. While the second method was getting under way, the third method was to be in active use, but only for persons who could show that they are needy.

The third method had gradually come to be accepted in the United States during the period from 1915 to 1935. Its advocates pointed out that, if given a few dollars in cash, an old person or couple could often get enough help from relatives or friends to enable them to live as well as at the poorhouse and with greater self-respect and without losing contact with their accustomed friends. Given a few more dollars, they could do it even without outside help. While a greater number of persons would be likely to claim such pensions—"assistance," as it is called now—than would be asked to go to the poorhouse, yet, per person at least, the state and counties would save money by abolishing institutional care for those not completely helpless.

Old-age pensions. Stimulated perhaps by the adoption of an assistance plan in Great Britain in 1908, Arizona in 1914 adopted one by "initiative and referendum." Although this was held void, Alaska adopted a similar one in 1915. In 1922 a model bill was proposed by Pennsylvania's Commission on Old-Age Pensions, the American Association for Labor Legislation, and the Fraternal Order of Eagles. The American Association for Old-Age Security (now the American Association for Social Security) shortly entered this field to lobby before all legislatures. By 1929 eleven new laws had been passed, but in Pennsylvania the supreme court held that state's law unconstitutional. The Pennsylvania constitution forbade pensions, and the law was not saved by the fact that it was merely a new application of the power which had built the almshouses and run the county farms. The court also blocked the immediate amendment of the state constitution and Pennsylvania might have had to wait several years for "pensions" if there had not been a gentlemen's agreement to pay them under the general relief law passed during the depression.

The typical early law left it up to the several counties whether they would use the pension method or not, and usually they chose not to. However, the

Wisconsin and Minnesota state governments gave their counties some encouragement by offering to bear part of the expense. It was also usual not to grant the pension to persons under 70. Long residence in the locality was required. This requirement is universal in state charity; it has always been on a local basis, with each set of local taxpayers anxious not to pay what it could avoid. The pension was to be \$25 or \$30 a month—but in practice it was often less. Although everyone who qualified was supposed to get the same amount, some states gave less than the average to a person who had a little income or more to one whose health called for special expenditures. A couple can live on less than two individuals can and so may receive less than they would if living separately. A pensioner may be allowed to keep his small property if he will grant the state an interest in it on his death. Gradually the "need" basis of the legislation has come to mean "Explain the degree of your need" rather than "Prove that you are destitute."

During the depression, unemployment used up the savings of many persons and bank failures wiped out others. These events stimulated sentiment for old-age relief. One method used for old-age relief was to include old people in the new unemployment relief system. When the federal government started turning the "unemployables" back to the states and cities in early 1935, there were about 750,000 old people on federal relief. Meanwhile many states had set up pension systems and by the end of 1934 there were 28 laws (plus Alaska and Hawaii), of which only 5 left the matter optional with the counties; Wisconsin and Minnesota had replaced their subsidy laws with legislation making pensions mandatory. At the end of 1934 there were about 200,000 old people 65 or over on state pensions averaging \$16 a month.

When the federal government withdrew relief payments, the irregularity in the payments to old people in different states was very great. Several "pension states" had paid nothing out. The Southern property owner was reluctant to assume a new responsibility for the Negroes, and a number of Northern property owners seemed to have similar reluctances about all workers.

In 1927 the Canadian government had passed a law which granted aid to provinces setting up assistance plans, an aid gradually accepted, by province after province, over a period of ten years. A similar plan introduced in 1931 in Congress by Senator Dill would have passed in the spring of 1934 if President Roosevelt had not intervened with his announcement that it would be best to have various forms of economic security treated in a unified plan. As it turned out, if the bill had been passed it would have fitted into the unified plan adopted a year later. The failure to pass it gave the Townsend movement a chance to grow.²

² Douglas, *op. cit.*, p. 12.

The Townsend plan. The Townsend plan called for \$200 a month to be paid to the 11,000,000 people over 60, on the theory that their spending would revive business. Old people, people fearful of old age, and people tired of the depression and no longer sure that Roosevelt would lead them out of it took up the plan, joined Townsend clubs, paid dues, and voted for the political candidates who favored their cause. Economists agreed that at best inflation would follow an attempt to use the plan, but its inventor had caught the American fancy by naming the thumping sum of \$200.

There were several results. The organization was investigated, charged with being a dues-garnering racket, but by that time it had frightened federal legislators into voting for the Social Security bill of 1935, either because they thought their Townsend constituents would notice a vote against it or because they thought some federal old-age plan was necessary to undermine the Townsend plan. Meanwhile many persons had been led to expect \$200 a month at 60 and were going to be dissatisfied with any lower pension. Moreover, Townsend had accustomed them to the idea that sales taxes were an inexhaustible source of social security funds—a method that was being introduced in various states and cities to raise unemployment relief funds.³

The federal Committee on Economic Security. The presidential Committee on Economic Security, presented a social security bill to Congress in January, 1935, at the time that the President was urging Congress to stop appropriating funds for direct relief. Federal work projects (the W.P.A.) were to relieve the distress of the unemployed, and the aged and other unemployables were to be returned to the states. Gradually, over a period of some months, these changes were made.

Did its new policy mean that the federal government would ignore the old people? Besides the large group, including most propertied Southerners, opposed to pensions of any sort there were many people of both parties who objected to federal interference of any sort and especially in this matter. The Dill subsidy proposal, to be sure, seemed fairly mild; the same principle had been used to encourage state road building. But the opponents of federal action pointed out that, if this subsidy method became established, Congress could usurp the power of the states wherever it chose to. They predicted, moreover, that the method would be held unconstitutional.

Despite these arguments, the Committee on Economic Security endorsed federal intervention by the subsidy method. In the case of unemployment insurance it applied this "coercion" in a peculiar way, to be described later. The Committee undertook to forward old-age *assistance* by recommending

³ Committee on Old-Age Security of the Twentieth Century Fund, *The Townsend Crusade*. New York. 1936.

that the federal government pay half the money,⁴ though Dill had proposed that it pay only a third. It applied the same method to indigent blind persons and to widows with children. But the Committee did not stop there. It recommended that the federal government also set up, independent of the states, a system of *annuities* for employees who had passed the age of sixty-five. These proposals were embodied in the Social Security Act of 1935, which was amended as to certain important details in 1939.

The annuity plan had been foreshadowed by the passage, in 1934, of a Railroad Retirement Act, in response to lobbying by the railroad unions.⁵ The Act directed each road to pay money into a pool to pension railroad employees when they reached sixty-five or had spent thirty years in railroading. In 1935 the Supreme Court, by a five-to-four vote, held the law to be unrelated to interstate commerce.⁶ Congress was then considering the Social Security bill, and the Court's decision might be interpreted to mean that the general pension or annuity scheme under consideration would be held void too. However, it was passed in reliance on the spending power of Congress; the official view was that Congress was giving away money to old people—not compelling them and their employers to save it. Congress also adopted this pattern in a new railroad act which was distinguished by providing an option of benefits for the railroader's wife if she survived him. The Supreme Court upheld the Social Security Act, in 1937,⁷ either because it was "within the spending power" or because the Court had adopted a more liberal point of view.

In 1939 Congress considered proposed amendments to the Social Security Act, especially to the annuity plan, which had been given careful study by a tripartite Advisory Council.⁸ As we shall see, the annuity scheme was radically revised, chiefly because it was made to provide allowances for dependents and annuities for survivors.

⁴ Moreover this subsidy was increased 5 per cent to help the state pay administration expenses.

⁵ The private pension plans, of which there were many on the railroads, had been impaired by the depression. In any case they did not exist on every road and only benefited the man who had stayed with one road for a long time. The seniority system of the roads had put the jobs mostly in the hands of older men, when technological unemployment sharply reduced the working force. Federal pensions were a device for replacing the oldest of them by young men, many of whom had already had some railroad experience.

⁶ *Railroad Retirement Case* (1935) 295 U.S. 330.

⁷ *Helvering v. Davis* (1937) 301 U.S. 619. In 1936 a district court had held the new railroad law invalid. The judge stated that Congress had power to pension old railroad workers but not to put the cost on the roads and their employees on the excuse of regulating interstate commerce. *Alton Case* (1936) 16 Fed. Sup. 955. The unions then conferred with the managers and agreed on a plan under which the tax on each side would begin with 2.75 per cent of the pay roll and rise gradually till it was 3.75 per cent in 1949. Congress was to enact this, with the understanding that no railroad would contest it. Just before enactment the Supreme Court in effect gave Congress authority to proceed, in the *Helvering* decision. The terms of the plan are given in *Monthly Labor Review* (May 1937), Vol. 44, No. 5, pp. 1126-27. See also Railroad Retirement Board, *Annual Reports*. Government Printing Office. Washington, D. C. 1935—.

⁸ *Final Report of the Advisory Council on Social Security*, December 10, 1938.

FEDERAL ANNUITIES

The Social Security Act's 1935 annuity plan was compulsory for nearly all employees. It had some similarity to private insurance; premiums were collected; when the worker reached sixty-five and claimed his annuity he did not have to show need. Moreover, rights to benefits were larger for the person who paid in more money per week or who entered the system at an earlier age. But since they were not *proportionally* larger, the better-paid workers were conceding something to the lower-paid, and the younger workers to the older. The 1939 plan went even further in requiring concessions of this sort and to the degree that it did so departed from the private-insurance pattern.

The 1935 plan required all employers to match the premiums which their employees now had to pay into a compulsory federal system. The tax on each began at 1 per cent of the pay and was to rise gradually. The money was expected to come in faster than it went out, for some years, partly because in the early years the claimants would get rather small annuities. The excess, piling up, was to earn interest, so that the fund would have enough to pay the larger annuities that would be due later on to people who had been paying in longer.

Though this accumulation was in imitation of private insurance reserve methods, it was criticized by some as subtracting too much from consumer purchasing and by others (especially the Republican party) as tempting Congress into unwise spending.⁹ The chief alternative proposal was to collect less through premiums and pay-roll taxes and, when the time came, after several decades, to make up the deficit by increasing general taxation.

Congress rejected this alternative in 1935 but considered it again in 1939. Congress at that time was inclined to be generous, for the Townsend movement had revived in the 1938 elections and many Congressmen had made promises to their older constituents. The new scheme derived some support from critics who felt that under the 1935 plan many annuities would be so small that they would have to be supplemented by assistance, especially if the worker had a wife over sixty-five.

The 1939 measure. In 1939, therefore, Congress voted to provide for a larger proportion of old people through the annuity system and, in doing so,

⁹ Critics of the law and of the Roosevelt Administration used related arguments in pressing for amendment. They suggested that Congress would take the money and forget to return it; that Congress, to do this, might not even have to go through the forms of borrowing, but instead might fail to appropriate the proceeds of the pay-roll tax to the Old-Age Reserve Account. As a result of these criticisms, the 1939 amendments changed the Account to a "trust fund" and provided for automatic appropriation. They also changed the rate to be earned by the reserve from 3 per cent to the current average rate of federal public-debt securities (2.5 per cent at the time).

to use up the money that was to be accumulated in the early years of the system. (1) Persons who were to reach sixty-five before or soon after 1940 were helped in two ways. Annuities were to begin in 1940 instead of in 1942. The monthly benefits of their annuities had been scheduled to be considerably below the average (though in relation to the money paid in they were more generous than the average, as we saw). The new scheme gave them benefits not far below the average. (2) Similarly, it brought persons in the lower wage brackets up closer to the average. (3) Supplementary payments were provided for annuitants who had wives or other dependents.

All these provisions not only, by greater generosity, cut down the amount of old-age *assistance* that would be called for, but they also made annuities more like assistance by grading the amount of the benefit according to the size of the family. Their extra expense was to be offset by cutting down the basic annuities promised to higher-bracket workers and to workers now young who would pay in premiums for several decades before being eligible for annuities. These people could still claim bigger annuities than others could, but their benefits were to be even less nearly proportionate to the money paid in than under the 1935 plan.¹⁰

The 1939 plan gave up almost entirely the idea of a reserve which would earn interest for the fund. This meant that it would be up to the federal government to find the extra money—perhaps 40 per cent of the total—out of other taxation. However, this necessity was a long way off,¹¹ and Congress made no plan for coping with it later. Instead, Congress took another step in the direction of increasing the share to be raised later by other taxes when it continued the current 1.0 per cent pay-roll tax on employers and on employees, which had been scheduled to rise to 1.5 per cent in 1940-42. This was a gesture of appeasement to businessmen, not the expression of a determination to minimize regressive pay-roll taxes and expand progressive taxation.¹²

According to the 1939 plan, then, employer and employee were each to pay 1 per cent of pay roll in 1937-42, 2 per cent each in 1943-45, 2.5 per cent in 1946-48, and 3 per cent thereafter. The part paid by the employee (checked off by his employer) he was unlikely to shift to the employer. The part paid

¹⁰ The Advisory Council had recommended that the proportion of the national income to be devoted to the new pattern of old-age benefits should not be greater than the proportion which the 1935 pattern would have used. This was about 10 per cent of pay roll, or somewhat more. *Final Report of the Advisory Council, op. cit.*, pp. 22-23. With this premise, if some got more, others had to get less.

¹¹ It was expected that income would exceed outgo till 1955, when about \$7,750,000,000 would have been accumulated. After that outgo would exceed income and the size of the contingent reserve to be kept would depend on how much money Congress contributed to the fund. According to the 1935 plan \$47,000,000,000 would have been accumulated (by paying out small annuities at first) by 1980.

¹² Congress disregarded the Advisory Council, which advised further study before the scheduled tax was changed. *Ibid.*, p. 48. The Council stated that general taxation ought to provide about a third of the total annuity money. *Ibid.*, p. 44.

by the employer may be, in part at least, shifted to the employee or to consumers. To the extent that these taxes fall on the worker or the consumer they may be condemned as regressive.

Calculating benefits. To determine his primary benefit—what he will get per month when he reaches sixty-five if he has no dependents—a worker must get from the Social Security Board ¹³ his average monthly earnings. A record is kept of all wages paid to him by any employer, but earnings above \$3,000 a year are not counted or taxed. The record is kept by quarters. If the worker has received pay in any calendar quarter, it is assumed that he worked each of the three months in that quarter. The worker can divide the number of all these working months of his life,¹⁴ between 1937 and his reaching age sixty-five,¹⁵ into his total earnings to find his average monthly wage.

Of his average monthly wage the first \$50 is given a larger weight, as a favor to the lower-bracket workers; 40 per cent of anything up to \$50 is put down as the first part of the primary monthly benefit. Only 10 per cent of anything above \$50 is put down as the second part. Thus a \$25 average yields \$10; a \$50 average, \$20; a \$100 average, \$25; a \$200 average, \$35. The minimum benefit is \$10 a month; anyone averaging under \$25 will get as much as if he had averaged \$25, namely \$10.

The third part of the primary benefit is an addition to the first and second parts—an addition of 1 per cent for each year in which \$200 or more was earned.¹⁶ Thus a \$100 monthly average wage promises a benefit of \$25 plus. To a worker born in 1880 it promises a benefit beginning in 1945 of \$25 plus 7 per cent for the seven full years between 1937 and 1945—if he had a job during them: altogether \$26.75 a month as long as he lives. To a worker born in 1914 it promises a benefit beginning in 1979 of \$25 plus 41 per cent for the full years between 1937 and 1979—if he had a job during each of them: altogether \$35.25 a month as long as he lives.¹⁷

This is the primary benefit. If he has no dependents, this is all he gets. But if he has a wife, when she reaches age sixty-five his benefit will be increased 50 per cent to aid her, unless she herself can claim that much in

¹³ The 1939 amendments direct the employer to give each worker a statement of the tax deducted from his wages. If he saved these statements, he would not have to consult the Board.

¹⁴ Except quarters under the age of 22 in which he earned less than \$50 per quarter.

¹⁵ He may continue to work after sixty-five if he chooses not to collect his annuity. If he earns \$200 a year or more, each of these years will increase his primary annuity by 1 per cent; but if his pay is below his previous average this fact will lower his benefit somewhat. If he earns less than \$180 a year (\$15 a month) he may collect his annuity while he is working. The 1935 plan neither paid benefits to a man over sixty-five if he continued to work nor let his new earnings affect his ultimate benefit rate.

¹⁶ "Earned in covered employments" is understood in such rules.

¹⁷ The 1935 schedule would have given the seven-year man less—about \$20; the forty-one-year man more—about \$54.

benefit because of her own past wage earning. If there should be a dependent, unmarried child, another 50 per cent of the basic benefit will be added. These supplementary benefits are a 1939 improvement.

Survivors' rights. The 1939 amendment also inaugurated "survivors' insurance" for the families of all workers covered by old-age insurance. An old worker may leave a widow who is unemployable—certainly she is if she is over sixty-five. A younger worker who dies may leave a widow, but she is presumed to be able to get along—unless she has minor children. He may leave parents who are unemployable—certainly they are if they are over sixty-five.

Before 1939 these people had several recourses, some under the Act. A surviving father over sixty-five might be eligible for an annuity in his own right. A surviving father or mother over sixty-five might apply for federally subsidized old-age assistance. A widow over sixty-five might be eligible for an annuity in her own right or could apply for assistance. A younger widow could apply for "dependent children" assistance, federally subsidized.¹⁸ To get assistance it is, of course, necessary to show that one is in need.

The 1935 old-age insurance plan had also provided that the insured and his family were always to get out of the system at least 3.5 per cent of his taxable wages. If he died soon after sixty-five, after receiving a few monthly payments, the rest of the 3.5 per cent was to go to his relatives or to his estate in a lump sum. If he died before sixty-five, the whole 3.5 per cent was to go to them. These lump-sum provisions were a sort of survivors' insurance, but the 1939 plan set up survivors' *annuities*. Under it the system will pay to a widow, when she is sixty-five or over, a benefit three-quarters as great as the worker's basic benefit; to a widow (usually under sixty-five) who has dependent children in her care, three-quarter benefit plus half benefit for each child under eighteen. If there is no widow or dependent child, but one or both parents are alive, over sixty-five, and dependent on the deceased worker, they may each claim half benefit. A widow does not have to show need or dependence, but no money is paid for children or parents unless they are dependent, though not necessarily needy.

¹⁸ If her dead husband is not under the annuity provisions of the Act as amended in 1939, or if her annuity under the Act is low, she may still apply for this assistance, which is sometimes called "mothers' pensions." It was first introduced into the United States in 1911 and, like workmen's compensation, spread rapidly from 1911 to 1919. In 1935 only three states had no mothers' pension law; but in only twenty states were the counties *required* to use this method. The 1935 Act offered a federal subsidy of one-third, excluding any payments made over \$18 a month for the first child and \$12 a month for others. The payments were not restricted to widows; responsible relatives could receive them for dependent children. Deserted wives with children were also eligible. Payments stopped when the child reached sixteen. The subsidy increased the number of laws and strengthened the existing ones. Under the 1939 amendments the federal government pays half, not one-third, of the \$18 and \$12 payments, and the assistance continues until the child is eighteen if he is going to school.

Some of the annuities that result from this system are shown here. Workers whose average monthly earnings are respectively \$50, \$100, and \$250 are taken as samples, and monthly benefits are shown to differ somewhat if the worker has been under the system for five years, twenty years, or forty years:

	FIVE YEARS	TWENTY YEARS	FORTY YEARS
\$50 a month average:			
Single person over 65.....	\$21.00	\$24.00	\$28.00
Married couple over 65.....	31.50	36.00	40.00
Widow and child.....	26.25	30.00	unlikely
\$100 a month average:			
Single person over 65.....	26.25	30.00	35.00
Married couple over 65.....	39.38	45.00	52.50
Widow and child.....	32.81	37.50	unlikely
\$250 a month average. This is the maximum; few would have this much.			
Single person over 65.....	42.00	48.00	56.00
Married couple over 65.....	63.00	72.00	84.00
Widow and child.....	52.50	60.00	unlikely

There are maximum and minimum benefits that apply to basic benefits, supplementary benefits, and survivors' benefits. No monthly payment to a family can be under \$10. Thus a worker over sixty-five must get at least \$10. If his wife is alive too and over sixty-five, her minimum is \$5 (half benefit); the family receives \$15 a month. But if he dies, she gets \$10—the minimum. If several people claim benefits because of one annuitant, the maximum monthly amount that can be paid is twice the basic benefit. Thus four orphans under 18 would get twice the basic benefit; a fifth orphan would add nothing to the family income.¹⁹

If there are no survivors who can claim benefit, the system pays a lump-sum death benefit of six times the basic benefit.

The system encourages the worker to get a job, to keep it, and to try to raise his pay.²⁰ (1) If he succeeds in this program and saves some money as a result, and still has it at death or age sixty-five, benefits are paid even though his savings keep the family from being destitute. (2) As we saw, more months of employment and higher wage rates increase one's basic benefit slightly. (3) Finally, if employment is too irregular, the worker will never receive any benefits or will be limited to the minimum.

Coverage. After the age of twenty-one,²¹ the worker will be entitled to benefits after being employed, in a covered employment, for a year and a half.

¹⁹ Another maximum is \$85 a month, but only a worker averaging over \$150 a month for 40 years would be restricted by this. Another maximum is 80 per cent of the workers' average wage. This may limit a worker with an average monthly wage of \$50 or \$60, but in the very lowest brackets it cannot do away with the family's minimum claim to \$20 (e.g., for four or more orphans).

²⁰ Cf. Eveline Burns, *Toward Social Security*. McGraw-Hill Book Company. New York. 1936. Chap. 8.

²¹ For an older worker, the period begins after 1936, not after his twenty-first birthday.

If there are quarters with no earnings or with less than \$50 during the quarter, it will take longer, but benefits will be due at any time that he has a record of substantial employment for half of the quarters that have elapsed. Any long period of unemployment will threaten to suspend his right to benefit by making it less likely that his record will show employment in at least every other quarter. But if the long period of unemployment comes after he has been employed long enough to have forty quarters of employment to his credit, then it is not necessary for him to worry, since benefits are due even if he never works again.

If he works little, or not at all, for some time after his twenty-first birthday, and then re-enters employment, it may take quite a while to pile up enough quarters of employment to match the quarters of unemployment. If he dies before that goal is reached, he is not completely cut off from benefits. Though his widow cannot look forward to a pension when she is sixty-five, yet if there are dependent children, they and their mother have a claim to benefits until they are eighteen; and if there are no survivors, the small lump-sum death benefit is paid. These limited rights are conditioned on six quarters of employment during the three years preceding death.

All employers in commerce and industry must pay the tax for themselves and on behalf of their employees, even though there is only one employee in the shop. The plan is not limited to interstate commerce. Exceptions, besides railroads, are religious, charitable, and educational non-profit organizations; foreign vessels and small American fishing vessels;²² farmers; and governments, American or foreign.²³ Excluded also are employees who do casual labor not in the course of the employer's trade, who do domestic service in a private home or college club, interns and nurses in training, and newsboys under eighteen. Excluded also (since 1939) are services done for nominal pay for fraternal organizations, for schools by students; and for a son, daughter, husband, or wife, or for a parent by children under twenty-one.

In 1940 the Act covered about 46,000,000 employees; the railroad retirement law covered about 1,500,000. About 8,500,000 salary and wage earners were not covered, including about 5,000,000 doing farm work or domestic or personal service and about 3,000,000 in educational, public, religious, and charitable jobs. Farmers, independent professional, and business owners were not included. Some of these, especially farm workers, may hold covered jobs from time to time and so ultimately claim the minimum benefit or more.

²² All American vessels were excluded until 1939.

²³ Since 1939 the system has included national banks, building and loan associations, and state banks which are members of the Federal Reserve System. Most federal and many state employees are under some sort of pension system, toward which they usually pay contributions. It is very likely that the existence of federal annuities will create a norm, and more will be granted pensions even if the Act is not extended to cover them.

Before and after 1935 many proposals were made to cover more people. The Advisory Council in December, 1938, recommended the inclusion of farm and domestic employees and employees of private nonprofit organizations. This was almost the only Council recommendation which Congress failed to accept in 1939.²⁴ In accordance with another suggestion by the Council, coverage was extended to seamen and bank employees. It is sometimes proposed that uncovered persons be allowed to join the system and pay voluntarily. If this were permitted the resulting benefits would be a bargain for older people and for poorer people, but no doubt many of these would fail to join. Only one proposal was made in 1939 for covering fewer people: Abraham Epstein of the American Association for Social Security said that it was a waste to cover people earning as much as \$3,000, who should be able to save enough to take care of themselves.²⁵

Under the reorganization of 1939 the Social Security Board forecast that by the end of 1940 almost half a million persons at or above sixty-five would have worked in at least half the quarters during 1937-39 and so would be eligible for benefits. A quarter of them would claim benefits for wives over sixty-five. In addition about one hundred thousand would have died leaving widows over sixty-five or widows with dependent children—adding another three hundred thousand pensioners. The total would be nearly a million.²⁶ The numbers would rise rapidly after that first year.

Not only are individuals still free to save, in order to supplement their federal annuities, but companies which used pension plans in the past to attract and hold good workers are still free to do so, since the annuities are low enough to call for supplementation. However, the promise of a second pension makes less impression than the promise of a first, and industrial pensions and, for that matter, trade-union pensions are now even less important than they were before 1935.

Differential treatment. Like a person receiving payments under workmen's compensation, the old-age annuitant is awarded a certain benefit rate which, if he lives, he may continue to receive for a long time. During that time, prices may rise and fall considerably. Whenever they do, the value of his annuity changes too. With old-age benefits there is another, related risk:

²⁴ The Council mentioned the need of totally disabled persons for pensions which now only a few receive under workmen's compensation. Such a person needs it for himself, as an old person needs an old-age pension, and for his family, as a younger worker's family needs help when he dies. Several members of the Council favored the immediate setting up of a plan for these people. Others did not.

²⁵ *Social Security* (June-July 1939), Vol. 13, No. 6, p. 7. No. doubt he had in mind that ultimately much of the benefits, as well as administrative expenses, would come out of taxes.

²⁶ Federal Security Agency, Social Security Board, *Release 749 b and c*, p. 3.

The first annuities granted to single workers averaged \$23.53 a month, ranging from \$41.20 to \$10.00; married couples averaged \$35. *Social Security* (February, 1940), Vol. 14, No. 2, p. 1.

prices and wage rates may change decidedly during the working life of an individual. If he retires when they are at a peak, his current wage rate may allow for the higher prices, but his benefit rate will be based on past wage levels and not allow for it. Congress could no doubt appropriate money to raise benefit rates if prices rose substantially. Indeed, such a rise might be the occasion for a switch to flat pensions for everyone at levels adapted to contemporary prices.

The system does not now promise the same flat benefit to every one, presumably (1) in order to keep all pensioners in the same relation to their past, accustomed standards of living and also (2) in order to stimulate men to rise to higher wage levels. These individualistic values could be preserved (if one chose) with some saving in bookkeeping and an avoidance of the price problem. Suppose that the old-age insurance plan divided all workers into deciles (that is, into ten classes, each with the same number in it). Even though prices and wage rates fluctuated considerably, an individual would still be in the same decile (unless there were some considerable change in his status). At death or age sixty-five he would predominantly have belonged to one of these ten divisions and there would be due to him a benefit corresponding to that decile—a benefit which would be adjusted if the cost of living rose or fell.

Perhaps people will decide to get rid of even such simplified bookkeeping. The 1939 benefit schedule gives so little weight to wage differentials and therefore to the two individualistic values mentioned above that it would not be a great change if pensions of the same size for everyone were established instead.

FEDERAL-STATE ASSISTANCE TO THE AGED AND THE BLIND

Persons over sixty-five who are in need and who are not covered by annuities or who are receiving annuities inadequate to support themselves and their dependents at a relief standard can turn to old-age assistance. Their chances of getting assistance and getting an adequate amount of it turn to a large extent on the financial situation of the state in which the applicant lives; however, since federal subsidies began in 1936, the poorer or less liberal states have gradually increased their average monthly payments, so that the treatment of aged persons has come to be more nearly the same in the various states. When subsidies began, the Board encouraged the states not to divide the available money among destitute applicants, but to give regard to the fact that some receive partial support, perhaps from relatives. Some states had been considering this factor and more began to do so; in 1936 the average payment to old persons living alone was \$20 a month, against \$17 for those living with families. In 1936, the first year of the joint system, 77 per

cent of the applicants for old-age assistance announced that they planned to utilize their money while living with husband or wife or other relatives; 6 per cent were to live with families to whom they were not related, 18 per cent were to live alone, 1 per cent in boarding houses, and 0.2 per cent in private homes for the aged.²⁷ The first group, about three-quarters, were continuing to live in the way to which they were accustomed; in many cases this was made possible by the assistance they received.

To some extent the assistance given those people replaced some other form of public aid. About a quarter of them had previously been getting relief of some sort. The federal subsidy does not help the states keep people in public institutions; about 1 per cent of the applicants were shifted from public institutions when they were granted assistance. About 21 per cent had received general relief from public funds and 1 per cent from private; 3 per cent had worked for the W.P.A.²⁸

In the middle of 1936 there were about 800,000 persons receiving federal and state old-age assistance; two years later there were more than twice that many. At that time, in June, 1938, 22 per cent of persons over sixty-five were getting assistance. In the various states the per cent ranged from 55 per cent in Oklahoma to 7 per cent in New Hampshire. The average payment was \$19.48 a month, California's average payment being the highest among the states, \$32.33, and Mississippi's the lowest, \$4.79.²⁹

Senator Dill's proposal of 1934 contemplated only assistance—no annuities. If it had passed, in forty years assistance would have risen to about \$2,000,000,000 a year (assuming prices to have stayed the same). This burden would have borne down the more heavily on the general taxpayer since the proportion of old people in the population will have risen considerably in forty years. The annuity plan of 1935 was expected to whittle down the assistance roll gradually. The annuity plan of 1939 was to whittle it down more quickly and further, since it covers more wage earners and, especially, their dependents. To the extent that these plans applied to large groups and did cut down those rolls and to the extent that they relied on pay-roll taxes instead of on general taxation (1935 did so more than 1939), they constituted a decision by Congress to use regressive taxes rather than progressive taxes, for the assistance money under the Dill proposal would probably have been raised by progressive taxation. Thus any measure to extend

²⁷ U. S. Social Security Board, *Second Annual Report, 1936-37*. Government Printing Office. Washington, D. C. 1937. Pp. 43-44.

²⁸ *Ibid.*, p. 45.

²⁹ U. S. Social Security Board, *Third Annual Report, 1937-38*. Government Printing Office. Washington, D. C. 1938. Pp. 81-82.

In June, 1939, the per cent of persons over 65 getting assistance rose to 23. The median payment for persons living alone was \$21 a month, for others \$17. Seven per cent received more than \$30 a month—almost all in California, Kansas, Massachusetts, and New York. U. S. Social Security Board, *Fourth Annual Report, 1938-39*. Government Printing Office. Washington, D. C. 1940.

annuities may well be favored by the general taxpayer, since it will cut the assistance bill and change the form and incidence of old-age taxation.

Federal control. The decision on where the assistance taxes are to fall is divided equally between Congress and the state legislatures, since each pays half. By holding one of the two purse strings, Congress can make conditions—presumably to prevent the arbitrary exclusion of unfavored groups and favoritism through political pull. Violation would lead the Social Security Board to withhold the subsidy for certain cases if it found that they did not actually come under the Act. It might even lead it to withdraw approval from the state's assistance plan as a whole and thus prevent any subsidy.

The conditions which were laid down in 1935 were few; they were aimed at some of the traditional limitations listed early in this chapter. A state may not, as some once did, allow counties to choose whether or not they would abandon the old ways for the assistance method; nor may counties set up administration and financing systems entirely independent of the state government. The state must provide claimants a chance for review of their cases. It must make reports to the Board. If it requires the recipient's estate (if he leaves anything) to repay it for assistance on his death, then the federal treasury is to get half the repayment. The age limit may not be over sixty-five (after 1939). Required residence in the state may be no more than five years out of the previous nine, including the immediately preceding one. Aliens may be barred, but not any class of citizens.

The 1935 Act no doubt implied that in cases of clear political abuse the Board could withdraw its approval; the relevant section of the Act said that the state must "provide such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be necessary for the efficient operation of the plan" (Title I, Section 2 [a] [5]). Thus, in bringing charges against the Ohio plan in 1938, the Board mentioned "unnecessary confusion and duplication" resulting in delay, discrimination in granting assistance, failure to inform applicants of their right to a hearing, failure to establish policies for determining need, and inadequate instruction of personnel about policies. In addition it was charged that the governor had made political appeals to recipients, that assistance personnel had tried to influence the votes of recipients and had engaged in political activity prohibited by the Ohio civil-service law, and that many members of this staff had been employed in violation of that law. Subsidy to Ohio was suspended for one month.³⁰

In some other states, too, "politics" meant inefficient personnel and

³⁰ The Board has stated that it would prefer a penalty which was less likely to work hardship on the needy. *Ibid.*, p. 13. Ohio got Congress to vote it the omitted month's subsidy, but the bill was vetoed, January 24, 1940.

biased awards. The needy were deprived while well-to-do persons and persons under sixty-five were pensioned. Oklahoma was the outstanding example of this sort of political abuse. There, as a climax, the elective officer whose department had the duty of mailing out the assistance checks enclosed a letter with each check, asking for re-election and implying that he was responsible for the assistance.

In some states the Townsend movement was strong because of the number of persons near or over sixty-five and of their friends, and because others had come to believe that unemployment would be abolished when bigger pensions made dollars move faster. Colorado amended its state constitution to provide \$45 a month in old-age assistance. Since only \$15 could (at that time) come from Washington, the attempt to live up to this constitutional mandate has meant the reduction of all other state services.³¹

About half the states gave pensions to the needy blind before 1935. The Social Security Act promised subsidies like those for old-age assistance, on a fifty-fifty basis, and so encouraged most of the other states to adopt this type of assistance. But in general the states were more reluctant to appropriate money for the blind and for dependent children than for the old. In 1937-38 they drew on the federal government for \$170,000,000 for the old and \$5,000,000 for the blind. About 40 per cent of the one hundred thousand blind were pensioned in this way. Since the proportion of blind is much larger among older people, some blind people received their money from the old-age category, and most of the blind pensions went to people over sixty-five, who chose to apply as blind rather than as aged.³²

1939 amendments. Old-age assistance was changed in 1939. Among the matters discussed above, the Board had recognized as the chief problems (1) political appointment of personnel, (2) political manipulation of recipients, (3) a tendency to divide up available funds among claimants instead of reviewing family finances and making up a family budget in order to decide the amount of money to be paid, and (4) irregular and uneven availability of money in the various states. In 1939 Congress did something about each of these needs. We have already seen that it replaced assistance by annuities in many cases, avoiding these four problems where it did so. In

³¹ Farnsworth Crowder, "Who Pays the Pensions?" *Survey Graphic* (July, 1938), Vol. 27, No. 7, pp. 376-80. In Ohio in 1939 the voters rejected a referendum bill to pay \$50 a month to any person over 60 (\$80 to a married couple), the plan to be financed by a tax of 2 per cent on "all land the value of which exceeds \$20,000 an acre." In California, at the same time, the voters rejected a referendum bill to pay \$30 a week to everyone over fifty. This variant of the Townsend plan made its political appeal chiefly to old people, but its proponents also claimed that it would bring permanent prosperity for everyone. Cf. *The Townsend Crusade, loc. cit.*

³² Douglas, *op. cit.*, p. 204; U. S. Social Security Board, *op. cit.*, pp. 86-89. In June, 1938, in Maine 15 per cent of the whole population were on blind pensions; in Montana 1 per cent; in the average state 4 per cent were on such pensions, the average payment being \$23 a month. *Ibid.*, pp. 88-89.

addition (1) Congress required the states to set up merit systems for appointing people to the staffs which administer old-age assistance and the other federally subsidized services. (2) States were to keep assistance rolls secret from politicians and others. Congress did not adopt the Board's suggestion that assistance personnel be forbidden to engage in political activity, though it had recently forbidden federal employees to engage in political activity. (3) In deciding the amount of assistance to give, states were to take into account all the other income of the old people.

Finally, (4) as to making money more evenly available, Congress considered a plan to pay two-thirds of any assistance up to \$15 per person per month but to continue to pay only half of every dollar between \$15 and \$30 a month.³³ The more any plan calls on national taxation the more evenly the burden is distributed over the taxpaying population and the more equally assistance is available to the needy. The proposal was aimed to stimulate the poorer states to pay as much as \$15 to each case, since it would cost the state treasury only \$5.

This plan was rejected by Congress in favor of one almost opposite to it. As a result of the Townsend movement's political importance, the maximum federal subsidy was raised from \$15 per person per month to \$20. This rule applied to the needy blind as well as to old people. The effect was to help the richer states which were paying more than \$30 a month to some cases and to encourage them to raise some pensions from below \$30 to above \$30. In the poorer states it had no effect except to set a new norm in the minds of old people and lead them to work on the state legislatures for higher payments; this relieved the political pressure on Congress.³⁴

The uncertainties of capitalism, and the attenuation of family ties have meant a destitute old age for many, the many who are becoming a larger part of the total population, since the birth rate is falling. Relatively little of the money paid by insurance companies is used to provide support in old age to members of the working class.

State charity has traditionally been made unpleasant, but in the 1920's a movement for pensions led in parts of America to state or county assistance for the destitute aged. Since 1935 this method has been extended into all states, by the pressure of federal subsidy, but, in 1935 also, a plan was got

³³ Such a plan had been proposed by the Twentieth Century Fund. *More Security for Old Age, a Report and a Program*. Twentieth Century Fund. New York. 1937. P. 127. The late Grace Abbott, a member of the Fund's Committee on Old-Age Security, disagreed. She stated that the low-paying states were usually unwilling rather than unable to pay more; that employers there feared that higher pensions would affect wage rates. Her proposal was that the federal government pay half of every pension up to \$18 a month and two-thirds of everything paid between \$18 and \$30. *Ibid.*, p. 128. A direct method of help for poorer states would be afforded by varying the Federal subsidy inversely with the average income of the state.

³⁴ E. E. Witte, "Social Security—1940 Model," *American Labor Legislation Review* (September 1939), Vol. 29, No. 3, p. 102.

under way to eliminate assistance gradually and replace it with annuities for aged workers, payable to those who were destitute and those who were not. In 1939 an amendment to the plan speeded up the replacement process and extended annuities to workers' dependents. The annuity money is raised primarily by pay-roll taxes, but presumably it will some day receive subsidy from the federal treasury. Except in a few cases, the states did not pay the \$30 a month assistance set up as normal by the 1935 act. The setting of a new normal of \$40 a month, in 1939, made little difference. The states have been relatively slower in granting assistance to the blind, though their federal subsidy is the same as for the aged. Assistance, like relief in general, is subject to political favoritism; noticeable abuses may be penalized by the Social Security Board.

SUPPLEMENTARY READINGS

(See also "General Readings" at the end of Chapter 33.)

- COYLE, DAVID CUSHMAN, *Age without Fear*. National Home Library Foundation. Washington, D. C. 1937.
- LANSDALE, ROBERT T., AND OTHERS, *The Administration of Old Age Assistance*. Public Administration Service. Chicago. 1939.
- TWENTIETH CENTURY FUND, Committee on Old-Age Security, *More Security for Old Age; A Report and a Program*. Twentieth Century Fund. New York. 1937.

QUESTIONS

1. What did old people do before pensions? How do they manage now in cases in which the pension is only \$10 a month? \$30 a month?
2. Are pensions just the old relief under a new name?
3. In what way does need determine the size of old-age assistance payments? Of annuity payments?
4. Do workmen's compensation and old-age annuities have similarities? May one person claim benefits under both? Should both logically use private insurance companies? Public ones?
5. If federal intervention was not necessary for compensation, was it necessary for old-age legislation?
6. What political forces favored old-age legislation and what ones hindered it?
7. Are federal annuities like those sold by private insurance companies?
8. Did they become more like them in 1939? What were the principal changes in 1939?
9. What provision is there for the blind and for dependent children? Must they prove that they are needy before they can receive help?
10. Who is covered by old-age assistance? Were the changes made in assistance in 1939 aimed at increasing the federal control? Who wants greater federal control?

A QUARTER of a century ago a wave deposited accident compensation on American shores, but other social insurance proposals were washed away again. A later wave established old-age pensions on a "need" basis and then a deep depression institutionalized unemployment relief. This depression, in bringing the Social Security Act of 1935, imposed on these practices not only federal initiative but also the attempt to apply to unemployment, as well as to old age, an "insurance" pattern like that already found in accident compensation.

FIRST EXPERIENCE WITH INSURANCE

This chapter will deal with unemployment insurance and unemployment relief. Recent times and the changes that have taken place in them may be seen in the experience of hypothetical sample workers. Many people were laid off when business declined in 1937. Mr. A, in New York, found that since he had some savings he was not eligible to apply for local relief or for a federal W.P.A. job. His neighbor, B, out of work and without savings, would apply and very possibly be accepted and then might secure a W.P.A. job. For two years A's employer had paid a state tax for every week in which A worked, or rather for every dollar he received as wages. When 1938 came, Mr. A found that, savings or no savings, he was eligible to apply for a benefit equal to half his weekly pay, but he would get it only if he

had not succeeded in finding work after three weeks. B, who had been unemployed so much that he had no savings at all, but only debts, and was now on relief, found that he could claim benefits, too. But he had worked only half as much as the first man and could expect only about half as many weekly checks before his claim would run out. His family was large, and so his relief check was larger than the promised benefit. For this reason, and because he was afraid that he could not get back on relief, he did not want to collect his benefit. But the relief bureau told him that he should collect it; that they would try to give him a certain amount of relief money every week to supplement his small insurance benefit.

Workers in the neighboring state of New Jersey were being laid off at the same time. Their applications for W.P.A. jobs were about as likely to be accepted as New Yorkers'; their applications for relief less likely, since New Jersey left relief up to the municipalities. Under New Jersey unemployment insurance, as under New York's, the benefit would be half the wage. The waiting period would be only two weeks. But the Jerseyite would not be able to apply till 1939.

There had been a movement in New Jersey for compulsory saving for each working-class family, instead of insurance, which pools money collected from employers. New Jersey would probably have adopted this plan if it had not been for the Social Security Act. In the Act, Congress laid a 3 per cent tax on pay rolls, nine-tenths of which would, however, be remitted if the state legislature levied a corresponding tax (2.7 per cent of pay roll) to be used for unemployment insurance. In order to keep the money in the state, every legislature complied. The pressure is the same as that which we saw in the case of the 50 per cent subsidy for old-age assistance. Here, too, there is a subsidy—a 100 per cent subsidy. It is negative in form, however, since it is an offer not to tax. There is no federal pressure for the state to tax employees too, but New Jersey taxes them 1 per cent. New York, adhering to the accident compensation precedent, does not.

RELIEF BEFORE INSURANCE

The chief relief alternatives tried in the depressed 1930's were no relief, private charity, relief to families completely destitute (often this was given in the form of groceries and coal, sometimes in the form of cash), relief enough to bring family incomes up to some minimum (allowing for the size of the family), made-work paid on a need basis, government-work paid on a wage basis, and the spreading of work in private industry so as to cut down relief applications. To this list was later added unemployment insurance, which is a sort of relief or, at any rate, cuts down somewhat the applications for ordinary forms of relief. Some of the problems involved in choosing

among various relief methods and in applying them arise also in framing an unemployment insurance system: (1) What relation shall payments bear to need? (2) What part, if any, is to be played by the federal government? (3) How can a competent and nonpolitical administrative staff be built up?

In 1929 a quarter of relief expenditures came from private funds, and, as business got worse and relief expenditures increased, private gifts rose too, until in the middle of the depression private agencies were no longer equal to it and, yielding to public agencies, returned to their predepression budgets.¹ Local and, later, state appropriations provided the other three-quarters until 1932, when Congress agreed to lend money to the states.² The next year (under the Roosevelt Administration) the Federal Emergency Relief Administration was created to furnish money to state and local agencies provided they tried to raise money themselves or were in extreme need and provided they submitted to federal check on the efficiency and equality of their methods.

At that time (May, 1933) every sixth family was on public relief. To every two dollars raised locally (typically one from the state treasury and one from the municipality) the F.E.R.A. would add one. But it would also make up the deficiency in poor states, and instead of one-third it actually contributed 71 per cent of all relief in 1933-35.³ The F.E.R.A. thus had the effect of bribing the states into action and equalizing the burden over the whole country. Its checking function led it, in a few states, to refuse to give any more money to local agencies; instead, it undertook to distribute the relief itself in those cases, and also in the special case of transients, that is, migratory workers and their families, who had no home and to whom no state was willing to give relief.

The Roosevelt Administration not only set up the F.E.R.A. in 1933 but also planned to spread the work through the N.R.A. though industry had already done much in this direction. The Administration also hoped that the N.R.A., relief and public-works outlays, the A.A.A., and so on, would revive business. By fall it was clear that neither movement was being quick enough to solve the immediate relief problem (always greater in the winter when clothing and shelter and even food are more important). The Administration had undertaken to increase public-works employment by setting up the

¹ D. C. Kahn, *Unemployment and Its Treatment in the United States*. American Association of Social Workers. New York. 1937. Pp. 16. Cf. I. M. Rubinow, *The Quest for Security*. Henry Holt and Company. New York. 1934. Chap. 28, "Private Philanthropy, a Record of a Great Failure." See also the following chapters in Rubinow on the development of relief and its relation to insurance.

² On 1929-32 relief, see (besides Rubinow, *loc. cit.*) *History of Labor in the United States, 1896-1932*. The Macmillan Company. New York. 1935. Vol. III. Pp. 218-56 (cf. pp. 164-184 on public-works planning) and Harry Hopkins, *Spending to Save: The Complete Story of Relief*. W. W. Norton & Company. New York. 1936. Chap. 1. (cf. his following chapters on the Roosevelt period).

³ Derived from Kahn, *op. cit.*, p. 40.

P.W.A., but that too was slow in getting started and would employ only a few hundred thousand. The Civilian Conservation Corps was to have the same sort of limit. Accordingly they were supplemented by a federal Civil Works Administration which was to find jobs for all who wanted them; applicants did not have to show that they were in need. In two months (to mid-January, 1934) over four million men were taken on, including a million from local work-relief projects.⁴ Relatively large amounts were spent for supervisory and skilled employees in order not to limit C.W.A. to the more obvious projects needing little planning. Though it had been an enormous task to get the thing going, its liquidation was begun in January by reducing hours worked so that average weekly pay fell from \$14.75 to \$10.83.⁵ Almost everyone had been laid off by April. The reasons for the liquidation are not entirely clear—possibly a bid for conservative political support, possibly lack of adequate statutory authorization. The latter notion is supported by the fact that C.W.A. projects located on federal property were continued longer than others; the former notion, by the outspoken protest of business that the government was “spoiling” the labor market.

Local work relief, which had been superseded by C.W.A., was now re-instituted with the help of federal subsidies and by the end of 1934 employed nearly two and a half millions at relief wages based on need.

W.P.A. In January, 1935, the President told Congress that “we must quit this business of relief.” This meant that more people should be given work; in fact, that the federal government should create jobs for the three million and a half employables unemployed until industry found jobs for them. It meant that the federal government should abolish its F.E.R.A. and leave the million and a half unemployables and their families entirely in the hands of the states. At about the same time the President presented the Social Security bill, which also steered away from relief by espousing unemployment and old-age insurance. It did provide for the federal government’s subsidizing certain selected areas of relief—but not unemployment relief or relief in general.

A 1934 F.E.R.A. survey had found that 14 per cent of the urban wage earners on relief had handicaps probably making them permanently unemployable.⁶ Joblessness had caused many mental handicaps and permitted the worsening of physical ones. These people, and again as many who cherished no illusions of being employable, composed the million and a half who could not be thought of as a temporary problem. But the employables were a temporary problem and the W.P.A. projects proposed for them were

⁴ Kahn, *op. cit.*, p. 49.

⁵ *Ibid.*, p. 46.

⁶ M. Lane and F. Steegmuller, *America on Relief*. Harcourt, Brace and Company. New York. 1938. Pp. 88-89.

thought of as temporary, as all work relief had been since the beginning of the depression.

The return of the unemployables—or rather all who could not get W.P.A. jobs—to the states and localities over the course of 1935 meant a decided drop in the amount of relief given out. Not only were many cases cut off relief entirely, but the average amount per family, which had risen from about \$16 a month in July, 1933, to about \$30 two years later, fell again to about \$22 by January, 1936.⁷ The withdrawal of the federal government was especially hard on the transient group. Some social workers had hopefully classified transients as interstate commerce and thus clearly a responsibility of the federal government, but the transients, too, were “tapered off” in 1935.

By the end of 1935 the new federal works (W.P.A.) had completely superseded local work relief. After two years the subsidy plan of 1934-35 was injected into the W.P.A.; to a certain extent, the more money a city put up for materials, the more pay roll money the W.P.A. would assign to projects there.⁸ In the 1936 campaign the Republicans urged the abandonment of work relief. In 1938 there was a drive to return the initiative for works projects to the states. The motive usually behind this was to cut relief spending, either for fear of too much governmental indebtedness or because relief, including work relief, reduced the supply of labor somewhat. People wanted jobs but would not take them at relief pay levels because of the W.P.A. When not an antispending proposal, the “back to the states” movement proposed limiting federal functioning to subsidies, either for states’ rights reasons or in order to get the political advantage out of the hands of Roosevelt and into the hands of state and local politicians.

The dominant motive for work relief in recent years has been to prevent the deterioration of morale and skill which goes with joblessness. Critics, however, allege that the W.P.A. has had the opposite effect. They say that its inefficiency has killed all ideas of workmanship and that, like other relief, it makes people rely not on themselves but on government. The partial truth behind the efficiency criticisms, as well as behind the complaint that projects selected are not worth while, can be explained by the fact that W.P.A. has always been under pressure to create jobs in a hurry, and has been strictly limited in the amount it could spend, not only for materials and machinery, but also for nonrelief employees⁹ to do the more skilled jobs. Moreover, relief employees hired for skilled jobs worked very short hours, which not only cut the supply of skilled labor available to W.P.A.

⁷ Kahn, *op. cit.*, p. 25. In July, 1939, the average monthly relief payment per family was \$23.82; the average in the highest state was \$32.73; in the lowest, \$4.79. *Social Security Bulletin* (Sept. 1939), p. 52.

⁸ *The New York Times*, December 24, 1937, pp. 1, 4.

⁹ Until 1937, 10 per cent of the staff could be nonrelief; afterward, 5 per cent.

but also made it hard to synchronize their work with that of the less skilled. Another source of inefficiency was that industry left the less competent people to the W.P.A. Still another was the fact that there was less fear of discharge for inefficiency than in private industry, chiefly because W.P.A. was thought of as a relief distributor. Proposals have been made to increase the fear of discharge, in the interests of efficiency. Critics differed as to whether it would be more efficient to use an ordinary scale of government-work wages and hours or a single decency-living wage (varying with the size of the family).¹⁰

The W.P.A. was set up with a certain "security wage" per month for each of four classes (unskilled, semiskilled, skilled, and professional), growing smaller in each case as one went from North to South and from large towns to small ones. Thus, unskilled pay ranged from \$19 to \$55, professional from \$39 to \$94. In New Jersey the average W.P.A. wage was about what a large-sized family got on relief.¹¹ But the W.P.A. wage in the different classes was the same for employees with many dependents or none. As we have seen, it was graded rather according to skill than need; in other words, it reflected the ordinary full-time wage scales, being somewhat more than half as large.¹² The forty-hour week was basic. But, as we said, W.P.A.'s skilled labor worked fewer hours in their average week, especially after the prevailing wage amendment of 1936, which the unions said was needed to sustain the wage rates they had won from industry through collective bargaining. Union hourly rates were usually accepted as the prevailing ones, not only for the unionized town but also for the less unionized country, for the inexperienced as well as the artisans.¹³ Monthly wages were fixed, so hourly rates could be adhered to only by working short hours. Thus a \$1 an hour skilled man in the North would work about twenty hours a week—except that in some cases to provide work for the less skilled to do or to speed completion, he was kept on for overtime.¹⁴

In 1939, as part of a move to liquidate the W.P.A., Congress repealed the prevailing-wage rule. This caused a strike, chiefly by A.F.L. building trades workers, but this did not alter the new law. The new system was thirty hours a week for everyone, at altered rates which brought up the Southern unskilled worker somewhat and created a second class of unskilled labor on W.P.A.¹⁵

¹⁰ For the latter view, see Lane, *op. cit.*, p. 169.

¹¹ Lane, *op. cit.*, p. 2, chart.

¹² *Ibid.* The W.P.A. wage was aimed to be somewhat less than the average (not full-time) person in that stratum earned in that community, so as to add, if possible, to the already existing desire to leave W.P.A. for private industry. Cf. *ibid.*, p. 29.

¹³ *Ibid.*, pp. 29-31. The same "prevailing wage" pattern had been used in F.E.R.A. work-relief expenditures in 1933. *Ibid.*, pp. 22-23.

¹⁴ *Ibid.*, pp. 31-32.

¹⁵ *Monthly Labor Review* (October, 1939), Vol. 49, No. 4, p. 959. On the general subject of "Public Works, Work Relief" see H. Millis and R. Montgomery, *Labor Risks*. McGraw-Hill. New York. 1938. Pp. 83-116 (wage-rates, p. 106).

GENESIS OF AMERICAN INSURANCE

European unemployment insurance began at the turn of the century by government subsidy of trade-union out-of-work benefit systems. Since Great Britain's first law in 1911, compulsory insurance has been introduced in many countries and the trade-union subsidy method into few.¹⁶ In the United States, there were few trade-union benefit schemes and proposals for legislation all were for compulsory insurance. Though there was some interest in unemployment insurance in 1911-16, the idea did not come into prominence until the 1920-21 business decline. A plan brought before the Wisconsin legislature by Prof. John R. Commons stressed merit rating as a preventive and in general appealed to accident compensation to show that there should be unemployment compensation. To get away from the private insurance which he judged to be overexpensive in compensating for accidents, Commons proposed a state-wide employers' mutual for unemployment compensation. This suggestion also had the purpose of interesting businessmen by making them feel that it was their system. No law was passed, but Commons participated in a joint union-employer scheme in the Chicago men's clothing industry, which was the most durable of the joint schemes and company schemes set up in the twenties. This plan promised a premium reduction to the firm with steady jobs, but, since the premiums were relatively low (they were reduced during the depression)¹⁷ and seasonal fluctuations drained off the money, no company accumulated enough of a reserve to claim the reduction. There were a few union benefit plans, some of them long-standing ones, but they were not very important.¹⁸

¹⁶ The countries which have established nation-wide compulsory unemployment insurance are Great Britain and Northern Ireland (beginning in 1911), Italy (1910), Austria (means test, 1920, then independent of Germany), Eire (1911, 1920, then part of Great Britain), Germany (1923, 1927), Poland (1924), Bulgaria (1925), Canada (1935, a Dominion law, held void as usurping the powers of the provinces), and Yugoslavia (1935). Russia's law was repealed. In Australia, Queensland established state-wide insurance in 1922. The total of workers covered in 1935 was 36,563,000.

In Switzerland the money pressure which is exerted by the offer of national subsidies (initiated in 1924) has established canton-wide compulsory insurance in thirteen cantons, and in the United States (initiated in 1935) in all forty-eight states, since there the subsidy is backed up by a tax. The thirteen cantons covered 245,000 in 1935; the 48 states (plus 3 territories), 27,000,000 in 1939.

The countries which use money pressure in the form of national subsidies to voluntary union funds are France (1905), Denmark (1907), Norway (1915), Netherlands (1916), Finland (1917, the date of its new independence; system reorganized in 1934), Belgium (1920), Switzerland (1924), Czechoslovakia (1925), Spain (1931), Sweden (1934), Greece. The number involved in 1935 was 4,161,000.

The compulsory nation-wide method covers far more workers than the union-subsidy method does, overwhelmingly so if subsidies to states in the United States are reckoned as compulsion.

Figures are derived from U. S. Social Security Board, *Social Security in America*. Government Printing Office. Washington, D. C. 1937. Pp. 6-7.

¹⁷ Mills and Montgomery, *op. cit.*, p. 138, note 4.

¹⁸ On nongovernmental plans, see Bryce Stewart, *Unemployment Benefits in the United States*. Industrial Relations Counselors. New York. 1930; Mills and Montgomery, *op. cit.*, pp. 137-

The depression of the 1930's revived interest in unemployment insurance, but most legislatures did not meet for a year after the decline became noticeable. In January, 1931, however, bills were introduced in many states and investigating committees set up. At this time the Wisconsin proponents of unemployment insurance drew up a bill for "employer reserves." Instead of joining a mutual pool, as in the 1921 proposal, each company was to have its own fund on which its laid-off employees would draw; it was to be allowed to stop paying the required 2 per cent of pay rolls into its fund if layoffs were so few as to let the fund grow large enough to be an adequate cushion—namely 7.5 per cent of a year's pay roll. This was a plan for automatic merit rating, and it was predicted that it would lead companies to regularize employment considerably in order to reduce their premiums. Businessmen who had low turnover or thought they could regularize were less hostile than others. The company-reserve device made the small employer feel that the money in the reserve would still somehow be his and, in addition, he was invited to write the details of his own plan.

This sugar-coating of individualism succeeded in making the patient swallow the pill. The last inhibition was removed when, at the close of 1931, a Wisconsin farm congress voted for the plan, despite the usual hostility of farmers to social insurance intended to benefit city-dwellers; in January, 1932, the Wisconsin legislature passed the bill. Wisconsin businessmen still objected that they should be left free to introduce the reform on their own initiative and the legislature agreed to suspend the law for some time to give them a chance. If a minimum number of employees were covered by voluntary plans, the law was not to go into direct effect at all—the employers of the rest would remain untaxed. But Wisconsin businessmen were unwilling to buy other Wisconsin businessmen free. The law went into effect in 1934 with the collection of the first taxes from employers. Its existence predisposed legislators throughout the country to consider first the company-reserve method, and though the state-wide-pool idea was soon preferred,¹⁹ the former's insistence on merit rating is reflected in almost all the present pool laws.²⁰

Federal proposals. In 1932 the Democratic National Convention and the A.F.L. declared for unemployment insurance. This was not a declaration for federal legislation, though there was present the usual obstacle to extensive state legislation—legislators' unwillingness to burden local manufac-

40; C. A. Kiehel, "Security of Job Tenure and Trade-Union Out-of-Work Benefits, 1926-1929 and 1930-1933," *American Economic Review* (September, 1937), Vol. 27, No. 3, pp. 452-67.

¹⁹ P. H. Douglas, *Social Security in the United States*. McGraw-Hill Book Company, New York, 1936. Pp. 253-55.

²⁰ Further information on the Wisconsin law may be found in Elizabeth Brandeis, "The Employer Reserve Type of Unemployment Compensation Law," *Law and Contemporary Problems* (January, 1936), Vol. 3, No. 1, pp. 54-64.

turers (even though it might reduce somewhat the taxes they paid for relief). Various adherents of social insurance proposed a federal system, however—if necessary by amending the Constitution. One proposal was made to create a federal system for the railroads and persuade manufacturing industries to join it in order to secure a uniform competitive basis rather than submit to the diverse state laws that might be passed. Others thought that the courts would be more likely to hold constitutional a federal law putting a money incentive on the states to pass insurance laws with some sort of minimum requirements.

One money incentive proposed was the remission of some income taxes. Senator Wagner had brought about the creation of a Senate committee to investigate unemployment insurance in 1931; in 1932 this committee proposed that a company's income-tax payments be reduced by 30 per cent of what it had paid as insurance contributions. Senator Wagner embodied this idea in a bill in 1933, which did not pass. In 1934 he, together with Representative Lewis of Maryland, sponsored a new formula: the United States was to tax pay rolls perhaps as much as 5 per cent and the money was to stay in the state's unemployment-insurance fund if the state set one up. A competing bill was introduced by Representative Lundeen, providing for higher income taxes so that if the government did not find a man work he could be paid the average wage paid in the community, but not less than \$10 a week plus \$3 a week for each dependent.²¹

Federal law. The Wagner-Lewis Bill would have passed if President Roosevelt had not announced that he intended to lay before the next session a comprehensive security program. The delay was welcomed by some proponents of insurance who thought that the bill should be strengthened by prescribing considerable uniformity for the states and that the investment of the fund should be made a federal duty. Others preferred a wholly federal law. As it turned out, uniformity was not secured and a year was lost. However, there was intensive study of social security under the general direction of a federal cabinet Committee on Economic Security. After much internal debate, loose control of the states won, Roosevelt pronouncing in favor of experimentation. The tax-remission plan was accepted, rather than the alternative proposal of 100 per cent grants to the states, which was generally favored by persons urging stricter control.²² No standards were im-

²¹ The existence of the Lundeen bill presumably constituted pressure on some Congressmen to accept the Wagner-Lewis Bill, even though they thought it too radical. That the Lundeen Bill had some weight is indicated by its gathering fifty protest votes in the House the following year, after the House Labor Committee had held hearings on it and, by a narrow margin, reported it favorably (perhaps in a fit of pique at Chairman Doughton of the Ways and Means Committee, who had put his name on the Wagner-Lewis Bill and steered it into his committee's hands). See Douglas, *op. cit.*, Chap. 3, "Thunder on the Left," especially pp. 81-82. Cf. his Chap. 4, "The Legislative History of the Security Act."

²² Douglas, *op. cit.*, p. 37.

posed on the states in respect to waiting period (either to make it long enough to conserve the funds or short enough to keep people from having to seek relief); benefit period (either to make it short enough to save some of the funds for later applicants or long enough to make it worth while to set up separate system of benefits distinct from relief); amount of benefits (including minimums and maximums); benefit for partial unemployment, merit rating (though we shall see that this was encouraged); company reserves vs. pool; or exclusion of executives.

If Congress had rubber-stamped the Social Security bill in January, 1935, the current sessions of the state legislatures might have passed corresponding laws and hastened the setting up of the system. The law would then have been somewhat different. Employers of four or more would have been included. The board would have had power to see that the states hired people to administer the laws on a nonpartisan and merit basis. Even in a company-reserve state at least 1 per cent of pay rolls would have gone into a pool.

Actually the bill was not passed until August. In its new and somewhat more conservative form unemployment-insurance taxes began with 1936. Many states delayed until late that year or early 1937 before accepting the law, after Roosevelt's sweeping re-election had presumably indicated that it was unlikely to be repealed or amended. Under the Social Security Act, no benefits were to be paid for two years after contributions began, so that reserve funds could be accumulated which would give the state systems continuity and so that, incidentally, it could be determined how much various workers "deserved" in the way of benefits. Under the two-year rule, Wisconsin (which was now holding its employers to a rather more unified pattern in order to conform to the federal law) began paying benefits in July, 1936; thirty-five other states began a year and a half later, just in time to do part of the work of relieving the business recession of 1937-38; and the rest by July, 1939.

MAIN ASPECTS OF STATE LAWS

Coverage. We may expect, in general, that the state laws will include and tax only the companies taxed by the federal law. Congress did not try to cover all the fifty million persons attached (though not all employed at the time) to industries or gainful occupations. It omitted farm hands, domestics, officers and crews of vessels, persons working for father or husband or son, employees of federal and local governments and of charitable undertakings and the like, and nine million self-employed people. It likewise omitted six million employees in the establishments that have fewer than eight employees apiece. On January 1, 1940, of the fifty-one states and territories, twelve include firms with one employee or more, two with three or

more, nine with four or more, one with five or more, two with six or more, and the other twenty-five those with eight or more. Adding in these extra coverages, we find that about 27,000,000 workers are involved. This is about half of those gainfully occupied or hoping to be, a proportion smaller than Great Britain's 65 per cent (including farm labor), but larger than that in many countries.

Omitting small plants is supposed to relieve the burden on the administrators of the new laws, at least in their early period of devising methods to handle unemployment-insurance laws. It is also expedient for a legislator to be the friend of "little business." These considerations moved both national and state legislators. After 1935, state legislators who might have voted to go below the federal minimum were influenced also by the fact that below it they would not have the help of the federal Bureau of Internal Revenue to help them check up on delinquents; and, of course, there was no tax-remission incentive to inspire them. The first or simplification motive is a wise one, but perhaps it is carried too far, for companies with fewer than eight employees are already required to pay premiums for accident compensation in almost all states, and, since 1935, for old-age annuities.

Whether the line is drawn at eight or at a lower point, small firms below it have an advantage over competitors, which may, to be sure, be offset by workers' reluctance to take an uninsured job. It seems unlikely that it will cause much shifting on the part of employers to units of less than eight, especially since there is an attempt to make them responsible for bringing contractors' employees into the system if they are not already in.

Almost every state law permits an uncovered company to come into the system for humanitarian reasons or in order to avoid any prejudice which employees may have against working in an uncovered employment. If the company joins, it must do so for at least two years, however, and must not be an exceptionally bad risk.

Few laws omit white-collar workers—even high-priced ones—since the federal tax includes them. Since 1939 only the first \$3000 per year of each employee has been taxed. Like manual workers who get over \$30 a week, executives do not get a benefit proportionate to the premium which the company pays for them.

Presumably the federal law and then the state laws will gradually be amended to include domestic and farm workers. Even so, few domestic or farm workers will be covered until employers of one or two are more generally covered. Railroad workers were excluded from the Social Security Act in 1938 and given an unemployment-insurance system of their own.²³

²³ See U. S., Railroad Retirement Board, *Annual Report, 1937-38*, Government Printing Office, Washington, D. C., 1938. Pp. 11ff.

About 1,500,000 railroad workers should be added to those covered by insurance.

Transient workers are likely to be ignored by the states, as they are when they seek relief, but the problem of the man who works for one employer in several states or lives across the state line from his work is fairly well settled by an arbitrary definition found in almost all of the laws.

Contributions and merit rating. The money collected by the states, typically 2.7 per cent of yearly pay rolls, is destined for payment as benefits and not for administrative expenses. The federal law sets up this safeguard against state waste or political appropriation. It also requires that until the money is needed it be kept in a federal trust fund.

The Ohio Unemployment Insurance Commission argued in 1933 that workers should contribute as well as companies, partly to enlarge the benefits and partly to drive home to the workers that it was their system. Employers favored this idea, partly because they foresaw that more than 3 per cent of pay rolls would be called for later, and they hoped to avoid paying the additional amounts themselves. The Social Security Act, however, stuck to the precedent of accident compensation. Ten states voted taxes on employees, but four repealed them. In four of the remaining six the tax is 1 per cent of pay, but in Louisiana it is 0.5 per cent and in Rhode Island 1.5 per cent.

In the United States there are no state contributions except in the District of Columbia, though the states do have the expense of setting up administrative machinery, including the employment exchanges. The federal government also has an administrative mechanism. Moreover, under the Wagner-Peyser Act of 1933, the federal treasury pays half the expenses of the state exchanges; the Social Security Act requires the states to disburse benefits through these exchanges or through agencies approved by the Social Security Board. The federal government also undertakes to reimburse the states for other insurance-administration costs up to an amount that the Board thinks reasonable. It threatens to discontinue the grant if the state does not use methods calculated to insure full benefits when they are due; does not insure an impartial tribunal to hear complaints; or does not hand in full reports to the Board. It is predicted that expenses will be about 10 per cent of benefits, so that the federal government can reimburse the states for their expenses out of the 0.3 per cent of pay rolls which employers pay directly to Washington. Every covered employer at first paid out 2.7 per cent of pay roll, plus this 0.3 per cent, except in Michigan and the District of Columbia, which required 3 per cent plus the 0.3 per cent (January 1, 1940). Later most of the states expected to collect, under their merit-rating plans, less than 2.7 from some employers and, possibly, more from some others.

Merit rating. As we saw, the Wisconsin employer-reserves school stressed the regularization function of unemployment insurance and the idea

of merit rating. As the Social Security bill stood before Congress in 1935, it presented a serious obstacle. If a company's premium was reduced, its federal tax remission was reduced—and its total payments would still be 3 per cent. On behalf of merit rating, Senator Robert M. La Follette, Jr., applied to President Roosevelt. As a result, the Social Security tax pattern was amended to allow the full 2.7 remission despite the reduced premiums for a good lay-off record.²⁴

There are thirteen laws which provide for a state-wide pool of unemployment-insurance funds without merit rating; thirty-one have pools and merit rating; and seven others base their merit system in whole or in part on company reserves. To the last two groups it was pointed out that reduced premiums would seriously cut down the amount available for benefits, and it was proposed that a merit-rating state ought to require from its employers at least an average of 2.7 per cent—raising the rate of poor risks as it lowered those of good ones. Most merit-rating laws embody this plan, usually requiring a 3.6 per cent contribution if benefits paid to a company's workers exceed its contributions for the five years immediately past. Others go no higher than 2.7 per cent, since the Act does not require it of them. Though not required to, the state laws usually contain safeguards in the form of minimum taxes applying even to the steadiest companies. Of the thirty-one laws with a state pool and merit rating, more than half will not lower any company's rate below 2.7 unless the pool has a year's supply of funds, or below 1.8 unless it has two years' supply. Almost all set a rock bottom rate of 0.9 or 1.0 per cent.

The seven laws which have company reserves have been much criticized because that method is likely to leave some workers without benefits while others still had them—either because the company paid out benefits faster than a high tax rate could pay for, or because after years of good experience and reduced tax rates it suffered a sudden business decline. To offset these fears, the Social Security Act as passed safeguarded the reserves by permitting a state to award a company a rate below 2.7 per cent only if (a) the company had been able to pay all benefits due in the previous year, (b) its reserve was at least five times as big as the amount it paid in the

²⁴ The good record is measured under present laws by the scarcity of benefit claims made by company's workers, which is more complicated than ordinary turnover records are. The federal law also permits states to allow companies to substitute for unemployment insurance a guarantee of employment of thirty hours a week for forty weeks a year. In theory this is worse for the employee than insurance. Douglas, *op. cit.*, p. 139. But Millis and Montgomery, *op. cit.*, pp. 115-16, argue that the usual week will be longer than thirty hours and that the worker's annual income will not be lower under that plan. The federal law, in Sec. 910 (a) (2), permits a lower rate to a company under this plan only if it has fulfilled its guarantee the previous year and has set up a reserve containing at least 7.5 per cent of the yearly pay roll. Wisconsin and California, permitting "guarantees," are somewhat more strict than the federal law requires. *Ibid.* These guarantees are not (1940) a noticeable part of the system.

biggest of the last three years, and (c) the reserve was at least 7.5 per cent of the last year's pay roll.

Of the seven, Wisconsin, Nebraska, and Kentucky have company-reserve plans with small pools, made up of the earnings of the accumulated funds. These pools are to provide benefits for workers whose company's reserve has been temporarily used up. The other four states modify their company-reserve plans by assigning a fraction of the pay-roll tax to such pools: South Dakota assigns one-sixth, North Carolina and Vermont a quarter, and Indiana a half. It has been argued that, if separate company reserves leave some workers stranded without benefits if there is no such state pool to turn to, separate state pools will leave workers in some states stranded (or with lower weekly benefits than in other states) unless a federal pool is set up to take care of them.

As yet there is little evidence indicating whether or not merit rating will encourage regularization. Even if it does, this will not increase the total man-hours of labor bought in a year.²⁵

Benefits. The weekly benefit promised is, in two-thirds of the laws, half or about half of the worker's usual weekly earnings, a rate not dissimilar to the typical accident-compensation rate. In a fifth of the laws it is 65 per cent of earnings and the District of Columbia promises 40 per cent plus 10 per cent for wife, 5 per cent for each child or other dependent relative, up to 65 per cent altogether. The maximum benefit is \$15 a week (\$16 in five laws and \$18 in four) and the minimum is predominantly \$5 (it runs as high as \$10, but three states have no minimum and thirteen have one under \$5). A provision sometimes found is that persons regularly on part time or with very low earnings for other reasons are to get three-quarters of their usual pay or the ordinary minimum, whichever is higher. In 1939 several states initiated a movement to simplify record keeping by following the Wisconsin plan, under which there are ten benefit-classes, so that checks are always made out to an even dollar, though this practice gives one worker a little more than half his weekly wage and another one a little less.

In most states persons intermittently on part time may apply for small benefits to supplement their wages in their short weeks. Part-time employment usually results from spreading the work in a business decline, either at the suggestion of a trade-union, or in order to keep the help attached to the company, or in order to avoid having the company's account debited with benefit payments to laid-off employees. But we see that there will be *some* debit, in all but a few states, if the men are on half-time ($\frac{1}{2}$ time) or

²⁵ See C. A. Myers, "Employment Stabilization and the Wisconsin Act," *American Economic Review* (December, 1939), Vol. 29, No. 4, pp. 708-23. R. A. Lester and C. V. Kidd, *The Case against Experience Rating in Unemployment Compensation*. Industrial Relations Counselors. New York. 1939.

less, for the fund will pay the employee enough money to bring his week's receipts up to the size of a full week's benefit (half-pay)—in fact a bit above it: either full benefit plus a sixth of the part-time pay, or—a simpler formula, found in fewer laws—full benefit plus \$2.

Normal unemployment. As with accident compensation, a waiting period is required in the belief that the worker's family can without great trouble absorb the cost of minor interruptions and in the hope that most severances will be shorter than the waiting period. Money saved by this device goes to lengthen the benefit period at the other end for families whose hard luck is long-continued. There are 39 laws which require two weeks of idleness, but these two are usually required to have occurred in the previous thirteen weeks. Usually, under these laws, if the worker is laid off several times during a sixty-five week period (a year and a quarter), he has to wait two weeks again the second time, one week the third, and not at all the fourth, for then he is assumed to be close to starvation. Texas requires an initial waiting period of only one week. Of the eleven laws which call for a three-week waiting period, some are sweetened by allowing the worker to count toward his waiting-period any idle week within the last fifty-two. In most laws two weeks of partial unemployment count as one week of full idleness, for waiting-period purposes.

On the assumption that seasonal workers have already adjusted themselves to seasonal unemployment, half the laws provide that the administrative agency may decree special treatment for them, and three call for studying the matter. The special treatment is likely to mean giving no benefits during the definitely slack seasons.

Any tendency to prefer benefits to a job is checked by two practices. If a man quits or strikes or is fired for cause, he does not have a right to benefits in the same way that a laid-off man has; and if he refuses to take a job that the employment exchange has found for him, he will lose some or all of his rights to benefit. The federal act justifies certain reasons for refusing to take a job; it directs the state not to cut off benefit if the job refused is a strikebreaking one; if the company requires employees to join a company union or stay out of an independent union; or if its terms are substantially less favorable than those prevailing for similar work in the locality. The latter clause is rather vague. The typical American law applies it only to jobs for which the applicant is reasonably fitted and which are not too far away. The typical law penalizes refusal to take a job by denying benefit for about a month, though some refuse it till he has been employed and unemployed again. Usually the same penalty is used against a man who has quit his job. The penalty for discharge for misconduct is usually somewhat more severe

(except where the penalty for quitting is already complete disqualification during the current stretch of unemployment).

In most states strikers cannot claim benefit as long as the strike lasts. Pennsylvania, New York, and Rhode Island let them claim it after an extra waiting period of three, seven, and eight weeks, respectively. Since strikers do not expect their strikes to last long, this promise of a delayed benefit is little extra inducement to strike. It is possible that a strike called in one department would enforce idleness on the rest of the workers; but this contingency is provided for since the rules apply to all idle because of a strike unless they do not stand to gain by it.²⁶ During the depression of the 1930's relief authorities have usually refused to give relief to needy families (in some cases this would mean to most of the strikers) if they were on strike, but the rules of the F.E.R.A. were, and of certain states are, that need was the criterion and that it does not matter how it came about. Thus one element in the C.I.O.'s getting the United States Steel Corporation to sign up in 1937 was Pennsylvania's declaration that needy strikers would get relief.

Many disputes as to whether benefits are due have to do with the disqualifications just listed. Disputes of all sorts may be appealed from the decision of the administrators to an impartial tribunal—sometimes a tripartite board—within each state. We saw above the federal act requires this. Questions of law may go before the courts.

Duration of benefits. If the provisions just listed were drawn up to discourage anyone who might prefer benefits to work, the same motive is to be found in the practices as to duration of benefit. They contrast with accident compensation, which, in most states, lasts as long as the disability exists. In unemployment compensation, only to the extent, roughly speaking, that the worker has worked and acquired merit, can he draw benefits when unemployed. To draw even one benefit, he must, in the typical state, have earned eight weeks' full wages within the first three of the four calendar quarters which are ended when he applies. To know how many weeks' benefit he may draw, if the unemployed man does not find a job soon, it is necessary to note employment during his base period. In most states at the time of application this is the first eight calendar quarters (two years) out of the nine just ended. A record has to be kept of wages received by the worker in each quarter—with \$390 (averaging \$30 a week) as a maximum. The maximum is specified because it is felt that the worker deserves more benefits if he has had many *weeks* of employment regardless of whether he has received high wages during that period. The use of wage data is a simplified but indirect way of measuring his deserts and has to be corrected

²⁶ Cf. Sidney Schindler, "Collective Bargaining and Unemployment Insurance Legislation." *Columbia Law Review* (May, 1938), Vol. 38, No. 5, pp. 858-86.

by setting a maximum, in order to curb the claims of the men with the high wage rates. The worker's employment during the base period having thus been noted, he may start drawing benefits which are charged against his wages, beginning with the beginning of his base period. In the typical state he is allowed to draw, in benefits, one-sixth as much as he received in wages. If we take a man whose credit for the quarter is \$390, the maximum credit, his benefit is likely to be the maximum one of \$15 a week, and he would therefore be allowed 4.33 weeks of benefit against that quarter.

From this it looks as if the worker could, if necessary, go on drawing benefits for 34.67 weeks (8 quarters times 4.33). In fact, since meanwhile other calendar quarters are ending, he might be allowed to draw another 4.33—and another. However, in order to conserve the funds, the following practice obtains: the person who, within the year after his first application, has more than 16 weeks' idleness after the waiting period or periods (including in idleness layoffs at different times and including part-weeks off for which he draws some benefit) is judged a special case, is dropped from benefit, and is told to apply for relief if he is needy. This 16-week limit is naturally an incentive to seek work, as is the limited size of the weekly benefit. In European countries the limit is higher, and it has been suggested that the American compensation machinery, once installed, might as well be put to more substantial use. If the worker is out of work the following year—still or again—he may draw on his unused credits, again with a 16-week limit for that year.

On January 1, 1940, twenty-seven laws used the sixteen-week rule. About half the others were above and half below. Missouri was low with twelve weeks and the District of Columbia high with 26.6.

In 1939 a movement began, reflected in several amended laws, to grant all applicants the right to the same number of weeks of benefit.

The plan in motion. In the first year of nearly full operation, 1938, about 3,800,000 persons received checks. Some of them applied a second or third time during the year, having used up their first claim. This can be seen in the fact that 6,186,780 claims were allowed. Moreover, half again as many claims were rejected, indicating that claimants did not yet understand very well their rights and the limits on them. The average claim paid benefits for six weeks. Benefits paid to people who were totally unemployed averaged \$10.93 in the whole United States. The averages in the states ran from \$5.89 in Mississippi to \$12.76 in Indiana. A much smaller number of partial unemployment checks averaged \$5.39 for a week. In all, almost four hundred million dollars were paid out. There were many delays and errors which in general can be laid to the haste with which the system was set up and the lack of experience on the part of the large, new staffs.

In theory the state employment exchange tries to find every claimant a job before the question of unemployment benefits comes up. In theory the exchange is to make sure that the man is willing to work before he collects his money. Actually, since it is known ahead of time that relatively few jobs are available, the placement bureau and the benefit bureau tend to work fairly separately. In the early days of benefit payment the benefit bureau was swamped with work, and the practice arose of having the placement interviewer take the claimant's first benefit application, the later ones to be taken by the staff of the benefit bureau.²⁷ Other states, on the contrary, do not even let the placement agent know which workers are receiving benefit, so that there shall be no discrimination in placements in an endeavor to cut down the amount of benefit payments. The co-operation of the two bureaus in each state depends chiefly on the local organization, but a step toward greater co-operation was taken in 1939 when the federal reorganization put the two federal supervisory agencies—the Employment Service and the Social Security Board—under the new Security Agency.²⁸

As with workmen's compensation and old-age benefits and assistance, machinery for appeals is available for unemployment-benefit claimants. Some states are more careful than others to call claimants' attention to their rights of appeal. Though interpretations in the first years of the system will dispose of many points, there will always be much room for argument and much room for different interpretations in various states,²⁹ as well as for experiments by state legislatures. Presumably there will be fewer than forty-nine interpretations, however, since states will imitate each other; and Congress may very well impose more and more conditions that will make state practices increasingly uniform.

Other movements toward simplification include proposals for reducing the amount of reporting by employers as well as the amount of calculation required of government clerks. As we have seen, some simplification is being accomplished by giving up the hope of gauging the duration of each worker's benefits accurately by the steadiness with which he has held a job, and the size of his benefits accurately by the rate of his earnings.

A movement to cut the employers' pay-roll tax has taken the form of proposals to inaugurate or extend merit rating in such a way as to reduce as many firms as possible below the normal tax. The movement was helped by

²⁷ W. M. Leiserson, "A Balance Sheet of Benefits," *Survey Graphic* (March, 1939), Vol. 28, No. 3, p. 246.

²⁸ Cf. agreement between the two, March 30, 1937. United States Social Security Board, *Third Annual Report*, 1938, p. 60. The number of state employment offices rose from 229 to 900 during 1937-38. *Ibid.*, p. 62.

²⁹ The problem of when to refuse unemployment benefits because the claimant is really disabled by sickness or accident may some day be solved by adding health insurance to the benefit bureau's functions.

the fact that the states had accumulated a very considerable reserve \$1,300,000,000 on July 1, 1939, namely, three times as much as had been paid out in benefits in the previous twelve months. This movement to reduce contributions has been opposed by a movement to increase benefits instead, either through separate state laws or through one federal law.

SUPPLEMENTARY READINGS

(See also "General Readings" at the end of Chapter 33.)

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QUESTIONS

1. "Unemployment insurance is no use in a big depression like the one that began in 1929, but it was that depression which persuaded the United States to install unemployment insurance." True?
2. If unemployment insurance is as unproductive of goods as relief is, why try to substitute the one for the other?
3. To what degree has the substitution occurred?
4. What arguments are there for and against public works as an unemployment measure?
5. Does merit-rating characterize an adolescent or a sophisticated type of unemployment insurance?
6. Why did the federal government enter the field of relief? Public works? Unemployment insurance?
7. Compare unemployment insurance with workmen's compensation and old-age legislation in respect to (a) who is covered, (b) who contributes, (c) what company or fund carries the insurance, (d) how large the contributions are, (e) how large the benefits are, (f) how long the benefits are paid.

INTERRUPTION of income is a common complaint which we have seen workmen's compensation, old-age pensions, and unemployment insurance set up to meet. It is also the center of the health problem, for when the wage earner falls ill, it creates obvious difficulties for the family. But the problem is serious, too, when any member of the family falls ill or has an accident. The illness of a child puts a burden on the household, and it may be called on to pay for patent medicines or a doctor and drugs, if not for hospitalization. Still more of a burden is the illness of the housewife. Even if there are no extra expenses, the family loses her services—if she does not ruin her health by working instead of staying in bed. Relief agencies which pay money or provide services to help cure illnesses consider wives and children as well as male wage earners; but since the agencies rarely have money enough to attack the fundamental health problem of an individual, they confine themselves to curative measures undertaken when a disease comes to the surface. And, of course, a family gets no such aid in time of sickness—either money to live on or medical services—unless the crisis brings it to complete destitution.

Present-day group payments. When health insurance is set up, it usually tries to make up for lost wages by paying "cash benefits" and to effect a cure by giving "medical benefits." A medical benefit system may be described as "group medicine" and is often condemned as a departure from our individualistic tradition of purchasing medical services. However, in 1929,

workmen's compensation (which is a kind of health insurance) and other *group-payment* methods of paying for *medical services* accounted for \$830,000,000 a year, or about a quarter of the medical service bill of the United States. Of this quarter, \$100,000,000 was contributed by private charity and \$100,000,000 given free or at reduced rates by physicians and hospitals; \$40,000,000 worth of medical benefits came from voluntary insurance, such as that carried by some railroads for their employees, and \$80,000,000 worth of medical benefits were paid for under compensation laws. The largest part, \$510,000,000, was the public expenditure of funds derived from taxes. Of this amount, \$94,000,000 was spent on public health services that were largely preventive and \$416,000,000 for services mostly curative, given not only to relief families but also to the army, for example, and to patients in hospitals for tuberculosis, mental diseases, and the like.¹

One criticism of health insurance which is often heard is that it will replace the private practitioner by a salaried public doctor. Has the present group medicine done this? While some of the \$830,000,000 went to pay salaried doctors and to maintain public hospitals, a large part was paid to private practitioners and hospitals. If health insurance is established and brings a larger proportion of the country's doctor bill under group payment, the European experience indicates that most of the medical service under this plan will come from private practitioners. If curative State medicine for the destitute is expanded, it will take some of the \$200,000,000 off the shoulders of private charity and of generous doctors. If curative State medicine is extended to any further strata, such as the lower wage brackets, it will perhaps be taking the place of health insurance.

Medical strata. A consoling saying is current in the United States that the people who get the best medical care are the very poor and the very rich. While in many cases relief clients get better care than families in the next higher stratum, and while there are many free hospital beds in urban areas, the poor get the rich man's care only if their diseases have a scientific interest and come under the observation of physicians with hospital facilities which make a thorough study of the disease possible. Of course, even if that saying is exaggerated, it may still be that, forgetting the rich, everybody gets roughly similar treatment, and gets about as much as he needs; for there is a tradition of the medical profession that people are to be charged in pro-

¹ Figures of the Committee on the Costs of Medical Care, quoted in I. S. Falk, *Security against Sickness*. Doubleday, Doran and Company. New York. 1936. Pp. 48-49. A very small part of the voluntary insurance is medical indemnity insurance taken out by individuals in private companies. The group hospitalization and other group plans have raised the amount paid out by voluntary insurance a great deal since 1929. All these figures refer only to medical benefits. As for cash benefits, Falk's figures (p. 43) indicate that they are about \$200,000,000 from workmen's compensation (assuming that they are 2.5 times as great as medical benefits are) and \$180,000,000 from voluntary insurance of various sorts.

portion to their income and that the very poor and destitute are to be treated free. In fact, we have just seen that many millions in services are donated.² But, as applied in actual practice, this principle puts an unequal burden on doctors, for the more easygoing ones will take more charity cases and leave more bills uncollected, especially if they have working-class practices where they come in contact with destitute patients. And, despite free work, the quantity of service bought or received is much less in the lower brackets. Yet the need for medical service is considerably greater there—partly because of the past failure of the poor to get medical service and partly because of working and living conditions and diet. The greater need is suggested by the fact that the death rate for tuberculosis of the lungs is seven times as high for unskilled workers as for professional workers. Among the bottom forty million people in the United States, there is no medical care whatever in one out of four cases of illness which incapacitate a person for a week or more. Half of the forty million are on relief; the other half can buy medical service only by giving up other essentials.³

To see how different classes fare we may take a relatively prosperous year, 1929, for which the calculations of the Committee on the Costs of Medical Care show (a) the average yearly expenditure per family for medical care in different income groups and (b) the proportion of cases of illness of all sorts in which there was no medical care of any kind:⁴

FAMILY INCOME	(a) EXPENDITURES	(b) NO CARE
Under \$1,200	\$43	34%
\$1,200 to \$2,000	\$62	25%
\$2,000 to \$3,000	\$91	20%
\$3,000 to \$5,000	\$134	19%
\$5,000 to \$10,000	\$247	11%
\$10,000 and over	\$506	7%

These figures indicate that, for the average family in various strata, expenditures for medical service are roughly in proportion to income. A 1935-36 study also shows that the expenditure is about 5 per cent of income at all levels. It is a little below 5 per cent for the poor and a little above it for the rich.⁵

In the event that a system of health insurance is introduced, these dif-

² See also Falk, *op. cit.*, pp. 40-41.

³ Figures of the National Health Survey, quoted in Helen Hall and Paul Kellogg, "The Unreserved Millions," *Survey Graphic* (September 1938), Vol. 27, pp. 437, 439.

⁴ Adapted from table in L. S. Reed, *Health Insurance*. Harper & Brothers. New York. 1937. P. 27.

⁵ U. S. Bureau of Labor Statistics, "Medical Care." Bulletin 648, *Consumer Purchases in Detail*. Vol. V, Government Printing Office. Washington, D. C. 1939. It must be remembered that part of the higher expenditure of the rich is traceable to the fact that they pay somewhat higher prices to doctors and hospitals; on the other hand, poor families have more medical needs and also pay high prices in the sense that they are more likely to buy poor-quality medical service and patent medicines. See also U. S. Public Health Service, *Illness and Medical Care in Relation to Economic Status*. National Health Survey. Bulletin No. 2. U. S. Public Health Service. Washington, D. C. 1938 (mimeographed).

ferent strata of the population will fare much differently. Instead of the average \$2,500 family getting about half as much again in medical services as the average \$1,800 family, they would get the same services, or rather an equal chance at standard medical services. The various strata would pay for them, presumably, in proportion to their income. On the average they would, then, pay about what they now pay, but the upper strata would get less for this money and the lower would get more than they now do. Insurance would be a refined form of the medical profession's present rough attempts to charge according to income.

Its humanitarian aspects will probably be the principal thing about the plan that will recommend it to the middle and upper income strata. There is also the fact that, as insurance, it spreads the risks over time and over people, substituting a known expense for an unknown. Third, there is the fact that the upper strata are already being charged somewhat higher prices by the doctors. Fourth, even if the aggregate of dollars spent on medical services is the same under insurance as before, it may be that more of these services will come out of it. For instance, if people learn to use doctors instead of patent medicines and to call in a doctor early instead of late, more service per dollar will be forthcoming. Moreover, many doctor-hours, nurse-hours, and hospital-hours that are now idle can be put to use with very little additional expenditure.

Once such a system is in operation, people may feel rich enough to levy higher taxes in order to make medical service really adequate. This may be done either by increasing the health-insurance pay-roll tax or by increasing general taxation. If the latter is decided on, the government may spend the money either by subsidizing the insurance fund or else by giving more to federal, state, and city departments of health for research, for continuous instruction to physicians, for prevention of disease. State medicine for the destitute may be brought up to the level of insurance medicine by spending more out of general taxation, too. Some even suggest that State medicine should be expanded to provide free medical services in the way that free education is given today, confining the insurance mechanism to disability benefits. This might or might not mean devoting more of the national income to medicine, but it would almost certainly mean an extension of the clinic or group-practice method and some attendant money saving.

WHAT SORT OF INSURANCE DOES AMERICAN PRECEDENT SUGGEST?

Knowing the patterns of workmen's compensation for accidents and of unemployment compensation in the United States, what can one predict about American health insurance? The example of accident compensation suggests that health insurance will provide both cash benefits and medical

care. Yet it is possible to have insurance for one and not the other. Union benefit schemes have had only disability benefits, and early governmental schemes spent most of their money on disability benefits; newer governmental plans spend most of their money on medical benefits, and some of them ignore disability benefits completely.

Unemployment and accident compensation funds are built up out of contributions from employing companies. Health insurance funds might be set up in the same way, though they are more likely to come from a tax on both workers and companies, as do old-age annuities. The former pattern, and to a much less extent the latter, contains the possibility of merit rating—putting a stimulus on the employer to reduce sickness. But the employer has, of course, much less control over the general health of his employees and their families than he has over occupational diseases and unemployment in his plant. If a tax is laid on employers, their attention might be called to medical problems and they might join in a campaign for disease prevention.⁶

American accident, unemployment, and old-age compensation collect premiums from workers in proportion to their wage rates and pay benefits similarly. Health insurance will probably do the same. A worker with a family to support receives more money than a single man in accident compensation only if his injury is fatal; in unemployment compensation, only in the District of Columbia; in old-age insurance, only since the 1939 amendments. It is very likely that health insurance will disregard dependents in granting disability benefits to sick wage earners. Will it give medical benefits to the wage earner's dependents when they fall sick? There is no precedent here, except that the 1939 amendments to the old-age insurance system granted annuities to workers' widows. Will health insurance treat or pay for large and small sicknesses alike? Accident compensation covers all but trivial matters.

Insurance carriers. In the United States, accident compensation is usually carried by private insurance companies, some of them mutuals owned by employers; in some cases this type of compensation is carried by state funds. Unemployment compensation operates through state funds which invest with the federal government. In European countries compulsory health insurance was preceded by voluntary insurance through unions and "friendly societies" whose work corresponds to American fraternal insurance. These were incorporated into the compulsory scheme; they are private mutuals (owned by workers). Regional mutual funds were set up by the government to provide for persons who did not belong to societies.

If health insurance had been set up in the United States by the Social

⁶ Merit rating might improve factory sanitation, according to J. R. Commons and J. B. Andrews, *Principles of Labor Legislation*. Rev. Ed, Harper & Brothers. New York. 1936. P. 271.

Security Act of 1935, the method would presumably have been similar to that used for unemployment insurance: state funds, stimulated and perhaps subsidized by the federal government. The idea of using the private companies that handle most American workmen's compensation has not been seriously considered. One reason was seen in Chapter 33: the very large proportion of premiums that the companies use up in expenses. This holds true also of individual health insurance through private companies. They pay 38 per cent of their income to the beneficiaries, in contrast to 80 per cent paid by the Associated Hospital Service of New York City.⁷

In 1935-40 many co-operative and other private health-insurance projects developed in the United States that were analogous to the European friendly societies. If the movement grows large enough, it may amount to a vested interest which may demand that it be a basic constituent of any compulsory health-insurance plan, as it did in Germany and Great Britain. However, as we shall see at the end of the chapter, these projects are to a large extent a middle-class movement, and so their effect may, instead, be to confine compulsory health insurance or State medicine to the income brackets below the voluntary insurance level.

EUROPEAN HEALTH INSURANCE

A consideration of the directions of growth of European health insurance systems and their present structures may shed light on the problems faced by the United States. Compulsory health insurance exists in twenty-nine countries. Many of these began by subsidizing voluntary plans, as they did in unemployment insurance also; a few, besides the twenty-nine, still do so. More than half of the twenty-nine had instituted some sort of law by 1913, a time when interest was first being aroused in the United States. This was about the time that states began to take action on another "European notion," the partial health insurance known as workmen's compensation. The British and German were the two largest systems of health insurance in existence. Although the new British health-insurance law of 1911 attracted much attention, it was the older German system whose terms were reflected in the American proposals of the time.

The German system. In Germany gradual extensions to more and more employments brought in about 20,000,000 wage and salary earners by 1932. Since their dependents had some medical rights, 24,000,000 more persons should be added to this total. At that time Germany's population was 65,000,000. As we have seen, friendly societies and trade-union funds were allowed

⁷ James Rorty, *American Medicine Mobilizes*. W. W. Norton & Company. New York. 1939. P. 299-300, note 2, quoting *Best Insurance News*, 1937 figures.

to continue as part of the compulsory schemes, but the smaller and less competent were eliminated and most of the covered persons came to belong to local funds set up under governmental aegis. The employer paid in half as much as the employee, until 1934, when contributions became equal, the employer sending in both halves. The average proportion of pay roll collected at that time was 5 per cent.⁸

Benefits. The average benefits per insured person (per family) rose from twelve marks in 1885 to a peak of eighty-two in 1930; in 1934 they were fifty-seven. Minimum benefits of various sorts are prescribed by law, but the funds, which are allowed to compete for members by paying additional benefits, pick out different sorts of benefits to increase when they have the money available to do it.

Cash benefits began by being half and ended by being a fifth of the average benefit; in other words, medical service became more and more important in the total. The rate of the cash benefit is about half of the worker's earnings. Some funds have raised this rate to two-thirds or even three-fourths. If the patient has to go to the hospital, the cash benefit that his family is living on is cut down considerably. If the illness or incapacity extends beyond twenty-six weeks, the member may apply for invalidity insurance. If he dies, the insurance fund must pay a funeral benefit equal to about twenty days' wages. Some funds pay more. The average cost per member for funerals was half a mark in 1885 and in 1934; this is the only benefit item whose cost per member has not expanded substantially.⁹ The calculation of these two benefits, while graded according to the member's accustomed wage, is simplified as in unemployment insurance by dividing workers into wage classes instead of keeping track of their exact earnings or rates.

Insured women who bear children can claim cash benefits as well as medical attention. Usually they get three-fourths of their weekly wage for four weeks before and six weeks after confinement. The wife of an insured man gets only medical help.

Dividends. The extension of medical benefits to the dependents of the member took place in the form of "dividends" (additional benefits) and was instituted so generally by the funds in this way that it was included in the compulsory benefits in 1930. Benefits to dependents are not as generous as those to members. The latter include treatment from both general practitioners and specialists, some dentistry, some drugs and appliances. As we saw, if an individual accepts hospitalization, his family sacrifices some cash

⁸ H. A. Millis and R. E. Montgomery, *Labor's Risks and Social Insurance*. McGraw-Hill Book Company. New York. 1938. P. 279.

⁹ *Ibid.*, p. 282.

benefits. If the fund has the money, it may extend treatment from twenty-six weeks to as high as fifty-two.

Each fund tries to conserve its assets while trying to serve its members, and so watches for cases of malingering, which may be abetted by easygoing doctors. A second doctor will be sent to check doubtful cases. Final decision in disputed cases in this and other fields is given to government insurance courts. Because recorded sickness in Germany has increased since health insurance was instituted, it is sometimes supposed that a nation of malingerers has been created, but the increase is largely traceable to the fact that in many cases treatment was supplied for the first time under insurance and thus the records became more accurate. In times of unemployment, especially, workers who were going to be laid off anyway took the occasion to ask for treatment which they had neglected until then. In such times, too, the incentive to invent illness was a substantial one for persons not usually found in the small malingering fringe.¹⁰ A similar tendency was quite pronounced in the United States during the 1930's, when laid-off workers remembered neglected compensation claims.

The German funds bid down the prices paid to the doctors until the doctors organized. Almost the whole profession was involved, since four-fifths of them had insurance practice. A strike in 1923, in which the Berlin doctors refused to do insurance work, led to two restrictions. The government undertook to be a compulsory arbitrator if a similar emergency arose, and a number of funds (mostly in Berlin) set up clinics with salaried doctors, who also made visits to homes. The clinic was fought by the medical association and defeated. Before 1934 the advising board of each fund consisted of employers and employees. In 1934, in establishing a new medical association which restricted doctors somewhat, the Nazi government permitted the profession to put one doctor on these fund boards, and gave the profession complete control of medical questions.¹¹

When the Nazi government assumed power in 1933, middle-class complaints against working-class insurance were so great that the government considered abolishing health insurance, but decided only to reorganize it. Under the Nazis, health insurance may move toward State medicine. A modicum of this existed before, since anyone was able to get hospital service below cost if he would enter "third class."¹²

The British system. We have seen that Great Britain established a plan of insurance in 1911. Since then the systems of Eire and Northern Ireland have become detached from it. In England, Wales, and Scotland, there are

¹⁰ *Ibid.*, pp. 283-85.

¹¹ *Ibid.*, pp. 281, 286, 287.

¹² *Ibid.*, p. 285-87.

now about 17,000,000 insured wage and salary earners. Their dependents are likely to patronize the same doctor, but the family and not the fund pays him. In Great Britain in 1911 as in the United States a few years later, the industrial insurance companies objected to having death benefits included in a health-insurance scheme. In the United States their opposition helped defeat this type of insurance. In Great Britain, insurance companies prevented both the inclusion of compulsory death benefits and the competing State funds which we saw were set up in Germany. In fact in Great Britain new societies, set up by the insurance companies for advertising purposes, overshadowed the established friendly societies. Although these new enterprises have introduced many little services to win the confidence of the wage earners, it is generally said that the British wish they had a monopolistic government fund, if only to assure less unequal benefits to workers and to reduce costs of administration. The United States is likely to prefer the governmental method; for one thing, when health insurance is set up here, voluntary plans will probably not have expanded as much as friendly societies had in Great Britain in 1911.

British employers, like those in Germany, pay in about the same amount per employee as the individual himself pays. But, while Germany, by setting up wage classes, avoids calculating fractions of every man's wage rate, Britain carries simplification still further. All men pay the same weekly tax of 4.5 pence. Women, who on the average earn less than men, pay 4 pence; the employer in either case pays 4.5. The Treasury makes up the missing 0.5 for the women and for both contributes enough to bring the weekly total contribution up to 10.2; it pays the central administrative expenses (not those of the funds); and altogether puts in about a fifth of the whole.

Benefits. As in Germany, there is in Great Britain a cash benefit which aims to replace lost wages. As in Germany, it begins on the fourth day, but the benefit rate is proportioned to earnings only to the extent that the contribution rate is. A man gets 15 shillings and a woman 12. However, "need" is considered: a married woman gets only 10. The full benefit will not be paid if the member has not worked and contributed for 104 weeks, and no benefit will be paid if he has not had as much as 26 weeks' work. The regular fund provisions permit the member to draw as many as 26 weekly benefits in one year if he needs that many. To help prolonged cases a "disablement benefit" is provided the weekly rate of which is half the cash benefit.

An employed woman who bears a child is given 80 shillings (40 if the child is illegitimate), which usually goes to midwife or doctor, since no medical care is provided. She may claim disability benefits if she cannot work during pregnancy.¹⁸ An employed man whose nonemployed wife bears

¹⁸ Commons and Andrews, *op. cit.*, p. 265.

a child is given 40 shillings. The latter concession is the only way in which the British law extends medical benefits to dependents.

These provisions have done relatively little to improve conditions of childbirth. Opinion is divided as to whether tinkering with the insurance provisions would help or whether it should be made the duty of the municipality to see to it that there is adequate attention. Consultation centers for prospective mothers have already been set up. The precedent of tuberculosis argues against further maternity insurance; tuberculosis cases were once put under insurance, but in 1921 they were turned back to the public health authorities.

The insured person's right to medical benefit is less circumscribed than his right to disability benefit, for the former is not reduced if he has been working only a short time, it does not cease or decline after 26 weeks, and it is a right of the insured after age 65, even though at that age every person under health insurance has (since 1925) a pension due him.

In another sense the medical benefit is very circumscribed. The statutory or minimum benefits still reflect the simplified and rudimentary practices of the preinsurance friendly society. We have seen that the general practitioner's services (and minor drugs and appliances) are covered; hospitalization, nurses' services, specialists' services, including care of eyes and teeth, major drugs and appliances—these are not. To be sure, general practice takes in rather more and specialists rather less in Great Britain than in urban America.

As in Germany, the actual benefits are less circumscribed than the minimum which the law requires a fund to deliver. The additional benefits at first were mostly cash; now they are mostly services. This trend is part of the general trend we have seen toward recognizing the importance to the individual of adequate treatment (not to speak of prevention). Also the fund managers feared that if extra cash benefits were paid instead, these would encourage malingering.¹⁴

Most of the members, then, are entitled to some sort of care of the teeth and eyes, additional appliances, hospital and convalescent-home treatment. The government permits changes in the benefit schedule only if the fund shows that its reserves will not be impaired; the Ministry of Health has to approve the additions. However, the funds now differ considerably in the type and quantity of service they offer in this "additional" area—which includes nearly a third of all medical benefits. If there were free competition, the smaller or less well-managed societies would lose all their members to the big ones. But among other obstacles to transfer is the fact that a transferred person has to wait three years to be eligible for additional medical benefits and five years for cash benefits.

¹⁴ Millis and Montgomery, *op. cit.*, p. 299.

The physicians. The medical profession expressed itself to the Royal Commission (1926) as favoring the extension of insurance to cover complete treatment for workers and dependents, without regard to what fund they were attached to. The recommendation had an altruistic basis, but its fulfillment would also have meant a considerable increase in the demand for medical services. In any case, British doctors are not as opposed to health insurance as the American Medical Association has claimed.¹⁵

About 70 per cent of British physicians do insurance work. An insured person may change his doctor on short notice, provided that he can find a "panel doctor" in the region who is willing and able to take him. The doctor is limited to 2,500 workers. For each insured person on his list the doctor received 9 shillings a year. He thus has an interest in keeping the individual well rather than in multiplying his visits. Of course he may discourage his visits too much, but professional pride has prevented the insurance doctor from descending to the hit-or-miss methods of the "contract doctor"; besides he competes with other doctors for patients, and this competition is the keener because an insured patient is likely to bring with him the custom of his uninsured dependents.

As in Germany, there is a certain amount of misrepresentation or malingering which is traceable to periods of unemployment or strike.¹⁶ And employed women who are married sometimes decide that if they can be at home and draw benefit, it will be better than wages, not because they can loaf, but because they can keep house. Doctors, perhaps fearing to lose a patient, sometimes resolve the doubts in favor of the patient. They are, however, subjected to checkup; a doctor whose patients receive more than the average in benefits is given the gentle reminder of a query; if necessary his patients may be examined by inspectors. It is sometimes suggested that inspection be made in every case—that the attending doctor be relieved of all responsibility for making economic decisions.

The French system. France, though it has no unemployment insurance, in 1928 set up insurance for sickness, childbirth, and burial, and also for old age and invalidity, which sometimes require pensions over long periods. Here, too, there are funds taken over from preinsurance days and supplementary regional funds set up by the government. The funds pay money to the sick member to indemnify him not only for wage loss but also for medical expenses. If his wife or a child under sixteen is sick, an allowance for medical expenses is due. The services involved are not only those of the general practitioner, but also those of the specialist and the hospital. Sur-

¹⁵ James Rorty, *American Medicine Mobilizes*. W. W. Norton & Company. New York. 1939. Pp. 201-3.

¹⁶ Millis and Montgomery, *op. cit.*, pp. 302-3.

gery and dentistry are included, as well as drugs and appliances. The member receives the money from the fund and uses it to help pay his bills. The actual charges are almost always higher than the benefit money; in fact, the availability of benefit money constituted an increase in the demand for services and raised the prices in some places.¹⁷

Superficially at least, the French medical profession has succeeded in retaining the old pattern, with a maximum of freedom for itself and the patients. There are no legal restrictions at all on changing doctors. There is no definite scale of fees for services (let alone annual fixed fee per person) imposed on the doctor who takes an insurance patient. To be sure, the funds do not simply pay the patient a percentage of his bills, regardless of how high the doctor has charged. They have worked out a schedule of fees with the medical profession which are assumed to be normal; 80 per cent of the fees is paid to the patient. But, as we said, this normal schedule is not binding and doctors almost always charge more than that—and more, presumably, than they would charge if actual fees and not “normal” fees were fixed by collective bargaining with the funds as representatives of the patients.

As in all health insurance, the cash benefits are a temptation for the patient to get the doctor to certify him for too long, and the doctor is tempted to do it not only to retain the patient, as in Great Britain, but to get more fees, since it is a fee-for-service plan. This situation calls for inspection of doubtful cases—even more so than in other countries.¹⁸

Like Germany rather than Great Britain, France decided to make contributions proportionate to income, which means that, except for disability benefits, the better-paid workers would be taxed to help the lower-paid get treatment, although income over 15,000 francs a year was ignored. It was thought simplest to copy Germany's method of assigning people to a few wage classes, but wage rates fluctuated enough to cause constant changes into different wage classes, and in 1935 the law was amended to provide for a tax of 7 per cent of actual earnings to cover not only health and invalidity but also old age.

THE AMERICAN MOVEMENT TOWARD HEALTH INSURANCE AND STATE MEDICINE¹⁹

In the United States, a bill drawn up in 1915 by the American Association for Labor Legislation and a voluntary committee of the American Medical Association (the Association did not pronounce against health insurance until

¹⁷ *Ibid.*, p. 316.

¹⁸ Falk, *op. cit.*, pp. 234-35.

¹⁹ See also Rorty, *op. cit.*, Chap. 5, and Millis and Montgomery, *op. cit.*, Chap. 7.

1920) followed the German pattern. Existing societies were to be incorporated in the plan.²⁰ Medical benefits, like the German, were to extend to wife and dependents. Disability and burial benefits were proportioned to wages. Sentiment in organized labor was divided, as was that of organized medicine; in general they opposed insurance. When the United States entered the War, opponents of health insurance denounced it as an invention of the "Hun." Insurance companies and employers, opposing it, described the proposed contributions as additional costs rather than as systematized costs. Health insurance was defeated so thoroughly that nothing was heard of it for a decade,²¹ when several foundations united to finance a study by a Committee on the Costs of Medical Care. Though Dr. Rubinow inquired whether five years of study did not chiefly mean five years of enforced inactivity for the health-insurance movement,²² yet the study did create propaganda for insurance. To be sure, its final report²³ stressed especially the importance of group practice and recommended only voluntary insurance for some time to come. If the Committee hoped to conciliate the medical profession by its cautious pronouncements on insurance, it failed to do so, for the American Medical Association seemed even more strongly opposed to voluntary insurance,²⁴ and roundly condemned group practice.

The Committee argued that if compulsory insurance were introduced before group practice had been established and had demonstrated its economies, individual practice would be frozen into the system.²⁵ This might happen, but it should be easy to draft a law with enough freedom of choice for patients that they could choose not only between individual doctors but also between individuals and groups. The Medical Association did not, however, want such competition. Some of the doctors on the Committee in a minority report stated that insurance always led to much competitive effort by practitioner groups, hospitals, and organizations controlled by laymen; that this

²⁰ On trade-union plans of that time, see I. M. Rubinow, *Social Insurance*. Henry Holt and Company. New York. 1913. Chap. 18, "Beginnings of Sickness Insurance in the United States."

²¹ I. M. Rubinow, *The Quest for Security*. Henry Holt and Company. New York. 1934. Chap. 17, "The Collapse of a Movement," lists forces against insurance in 1915-17. See also Millis and Montgomery, *op. cit.*, pp. 322-23.

²² Rubinow, *op. cit.*, p. 216.

²³ Committee on the Costs of Medical Care, *Medical Care for the American People* (the Final Report of the Committee). University of Chicago Press. Chicago. 1932. On pp. 218-22 is a list of the Committee's 27 monographs and of related works.

²⁴ Committee on the Costs of Medical Care, *op. cit.*, p. 164. This is in the minority report of the adherents of the American Medical Association on the Committee. They note that the Committee's data show voluntary European plans to have been unsatisfactory and accuse it of inconsistency in preferring voluntary to compulsory plans. Their aim apparently was to tie up the Committee with compulsory schemes; at least the Association announced that the Committee was trying to Sovietize American medicine. *Journal of the American Medical Association*, December 9, 1932, quoted in Rorty, *op. cit.*, p. 199.

²⁵ Committee on the Costs of Medical Care, *op. cit.*, p. 129.

competition with doctors lowers the standards of medical care and makes it a business rather than a profession.

Social Security Act. The government's dealing with poor people as relief clients during the depression of the 1930's raised again the problem of health, as it did that of old age and, of course, unemployment. In 1934 Congress was much interested in unemployment and pension bills; not in health insurance. The Committee on Economic Security received many protests from doctors and did not feel it advisable to create an issue by including health insurance in the Social Security bill of 1935; but it did recommend that the new Board study the subject. In 1935, as in 1917, opponents of health insurance caused so many messages to be sent to Congress that even the provision for study was omitted. However, in 1935 the American Federation of Labor voted for health insurance.

Nevertheless the Social Security Act as passed contained the seeds of a revolution. It took the federal government deeper into the health business. It reinstated the practice (which Congress had dropped in 1929) of the federal government's subsidizing the states in order to guard the health of mothers at childbirth and the health of their children. Most of the subsidy was to be given on condition that the states raised an equal amount, but part was to be allotted to the states that especially needed it. The government not only added \$2,000,000 a year to the budget of the federal Public Health Service for investigating disease and sanitation, but also appropriated \$8,000,000 a year to be given to the states for public health work. This was to be allotted according to population, the existence of any special health problems, or financial need. These federal expenditures might be classed as preventive, in contrast to certain other health appropriations in the Act for pensions for the blind and for the rehabilitation of crippled children, besides an increased appropriation for the usual vocational rehabilitation of physically disabled persons.

This appropriation for public health raised the question of how far government was to go in helping its citizens and to what extent the federal government would take over the job or win the co-operation of the states. Meanwhile the Social Security Board proceeded to the study of health insurance, regardless of the absence of a Congressional mandate, the federal government made a National Health Survey, based on a large sample of the population, and in 1936 the President appointed an Interdepartmental Committee to Co-ordinate Health and Welfare Activities.

Insurance proposals. The general revival of interest in public health problems crystallized into voluntary plans and into compulsory bills before the legislatures, often based on a model bill proposed by the American Asso-

ciation for Social Security.²⁶ This bill called for insurance for nearly all wage earners, one quarter of whose benefits were to be cash disability benefits. Contributions were to equal 6 per cent of pay roll, one quarter to come from general taxation and the rest to be divided between employer and employee, the employer to pay most if the employee is a low-wage worker, the employee to pay most if he is a high-wage worker. Cash benefits would vary between 50 per cent of earnings (excluding any earnings over \$30) for a single person to 75 per cent of it for a man with a wife and three or more children. To get this the worker has to have made 104 weekly contributions. There is a waiting period of 5 days and a limit for benefits of 26 weeks in a year.

Rights to medical benefits begin earlier than rights to disability benefits—after 13 rather than 104 weeks of contribution—and continue for the insured and his family as long as he is part of the system, except that they stop after six months of an illness, perhaps to be succeeded by invalidity insurance. Benefits would be very broad, including liberal dental care (though in dentistry more than in other branches the American population has latent demands for treatment arising out of accumulated neglect). Excessive requests for drug prescriptions would be discouraged by requiring part-payment by the patient. An insured woman wage earner who becomes pregnant would not only receive maternity and prenatal care but could draw disability benefits for six weeks before confinement and for six weeks afterward.

All doctors would be free to take on insurance work; patients would be free to choose their doctors. The doctors of the locality would vote whether they wanted to be paid by salary, per patient, or per visit. The rates of pay would be the subject of collective bargaining between them and the representatives of the contributors.

In 1940 the Association published a revised proposal, characterized chiefly by the attempt to reduce the opposition by excluding from the measure nonmanual workers earning over \$1,500 or \$2,000 a year and by the attempt to get away from the complexity of contemporary unemployment insurance. In pursuit of the latter ideal, the bill proposed to assign workers to three or four wage classes, each of which would have a definite rate of contribution and rate of benefit. It was thought that record-keeping could be reduced still further by introducing the British system of stamps to be affixed to workers' booklets. The plan was to introduce state bills embodying this proposal and a federal bill for grants-in-aid to the states.²⁷

Other recent proposals for health insurance are those of Professor Millis and Dr. Reed. Millis stresses medical insurance for most catastrophic events,

²⁶ For discussion by the executive secretary of the Association, see A. Epstein, *Insecurity* Rev. Ed. Random House. New York. 1938. Chaps. 21-22 and pp. 851-58.

²⁷ *Social Security* (January, 1940), Vol. 14, No. 1, pp. 1, 6-7.

namely high-cost illnesses. These are typical hospital cases, and he hopes that this plan will play up the hospitals as the technical unit and will move toward group medicine. He feels that only a small part of the cost should come from general taxes, since otherwise beneficiaries may become accustomed to demanding and expecting too much from government. However, he favors expanding the public health services, including State medicine for special groups like the venereally diseased. Cash benefits would be fitted into the unemployment-insurance pattern and would be taxed against employers.²⁸

Reed favors group practice but does not make it a requisite of his plan, which is to offer the states their choice between insurance and State medicine (the latter of which implies group-practice methods), with the expectation that states which are predominantly agricultural will choose the latter and industrial states the former,²⁹ presumably because the easy collection of the typical social-security tax depends on the existence of employers, mostly big ones. An advantage of this duality would be that the two methods could be compared in operation, and possibly one of the two eliminated later.

The American Medical Association is inclined to accept cash benefits but to reject medical benefits.³⁰ There is, in fact, a general tendency to separate them, possibly, as just suggested, by handing the cash benefit aspect to the unemployment insurance organization. Thus the California Medical Association in 1935 voted for a plan of health insurance which contemplated only medical benefits. It has been pointed out that it might well be made routine to have a doctor other than the patient's regular doctor look him over and certify whether he is sick enough to be entitled to cash benefits. If this were done, and the doctor were paid per patient so as to remove his immediate incentive to keep the patient in bed, the chief link between the two sorts of health insurance benefit would vanish. Another reason given for separation is that the medical benefit plan should not be confined to persons who are wage earners, as cash benefits should be.³¹

At the end of 1938 the only two health insurance acts in North America were two provincial acts in Canada. Both of these provided only for medical benefits. The Alberta Act of 1935 is permissive only. If the voters of a region choose, they may set up a medical district which will inaugurate insurance and may extend the public health services. The British Columbia Act of 1936 compulsorily covers no one earning over \$1,800, and there are a good many other exceptions, but, as in Alberta, excluded persons may subscribe voluntarily by paying both employer and employee contributions. The act is supposedly mandatory, but its operation was delayed by the unwillingness

²⁸ Millis and Montgomery, *op. cit.*, pp. 350-51.

²⁹ Reed, *op. cit.*

³⁰ House of Delegates action, September, 1938.

³¹ Millis and Montgomery, *op. cit.*, p. 344.

of the doctors of the province to accept the rates of pay proposed—about \$4.50 a year per insured (and dependents). This rate may be compared with the 9 shillings paid in Great Britain (without dependents) for more limited medical attention.

In 1938 the New York Constitutional Convention fought over a measure which specifically proposed to name health insurance as a matter to be within the legislature's power. It was finally included, and its inclusion was approved by the voters.

The Interdepartmental Committee. In 1938 a national health policy was presented by the Interdepartmental Committee to Co-ordinate Health and Welfare Activities. Its Technical Committee on Medical Care brought in recommendations which were discussed and tacitly approved at a National Health Conference called by the Interdepartmental Committee. As with the Committee on the Costs of Medical Care, the dissent came from the American Medical Association—a dissent which was narrowed down to a protest against the insurance method.⁸²

The Interdepartmental Committee's recommendations⁸³ contemplated an increase in public expenditures for medical services and also medical-benefit and cash-benefit insurance. Most of these functions would be carried on by the states, but the federal government would co-ordinate and advise, as well as supply some of the money out of its general treasury, partly in order to coax the states to raise an equal amount, as is done now in pensions for the blind, for example. In respect to insurance, an alternative device was the tax remission used in unemployment insurance.

Public health. No recommendation was made as to just how rapidly to introduce insurance, but the public health expenditures were to reach their new norm in ten steps—one step each year until about 1950.

As we saw, a first step toward federal help in improving state health departments was taken by the Social Security Act. Since fewer than one out of three counties and cities has a full-time public health officer, the funds appropriated by the Act were to be used partly for training personnel. It was then proposed to subsidize the work of the state and local officials still further. Areas in which preventive work promised substantial control (and in some cases perhaps elimination of the disease) are tuberculosis, venereal disease, malaria, industrial diseases, pneumonia, cancer, and mental disorders. Free treatment is now offered in some of these cases and needs to be offered in others in order to make prevention complete. The Committee recommended

⁸² The meeting and the conflicts are reported in Rorty, *op. cit.*, Chaps. 1-3.

⁸³ *A National Health Program*, recommendations of the Technical Committee on Medical Care. Interdepartmental Committee to Co-ordinate Health and Welfare Activities. Washington, D. C. 1938 (mimeographed). (On the cover: National Health Conference, July 18-19-20, 1938.)

that at the end of ten years the country be spending \$23,000,000 a year more on public health organization, \$47,000,000 (above the current \$3,000,000) to fight venereal disease, and \$130,000,000 more on the other problems mentioned—altogether an additional \$200,000,000.

A closely related proposal was that \$165,000,000 a year be added to what was already appropriated by the Social Security Act and by the states to safeguard mothers and babies at childbirth, to watch the health of children, and to rehabilitate crippled children (\$95,000,000, \$60,000,000, and \$10,000,000 respectively—half to be paid by the federal government).³⁴

Hospitals. The Committee recommended that many new hospitals be built. Rural areas, where hospitals are now few, were to get small ones, plus 500 health and diagnostic centers to be used by both public and private physicians. If 180,000 new beds were added in city and country general hospitals, with equipment to make every hospital an important medical unit, about \$631,500,000 would be required (of which \$60,000,000 would be used for 500 small rural hospitals, \$1,500,000 for 500 centers). The units would increase the amount of group practice. The Committee suggested 5,000 new beds in tuberculosis hospitals and 130,000 in mental hospitals—\$475,000,000. It recommended that the United States pay half the cost of all this, namely \$553,250,000, and also give the hospitals 3 years' maintenance (\$117,000,000) before the localities take full responsibility. These expenses are of a different order from the public health expenses mentioned earlier—they are largely capital or nonrecurring expenses. As to both capital outlays and maintenance, the federal government would gradually drop out of the picture as it finished up its part of the arrangements. The locality would have the expenses of depreciation and maintenance after that.³⁵

Minimum care. The Committee put at the top of the list the public health, mother-and-child, and hospital needs just mentioned. The next item considered was health services for the "medically needy." This group includes the generally needy—20,000,000 on relief who now get some government medical aid—but it is also defined to include the next bracket of 20,000,000, who are not paupers but for whom a doctor bill is likely to be a crushing blow and who have such low pay that 5 per cent insurance contribution or even less taken off their pay would be a great hardship. Not only did the Committee assume that the first 20,000,000 were not going back to jobs where they could pay to enter a health insurance system; it also assumed that the next 20,000,000 would stay where it was. The conclusion it

³⁴ See also D. F. Cavers, "Public Medical Services under Title XIII of the National Health Bill," *Law and Contemporary Problems* (Autumn, 1939), Vol. 6, No. 4, pp. 619-27.

³⁵ The American Hospital Association deprecated building more hospitals. It said that one-third of the present beds were unoccupied. Rorty, *op. cit.*, pp. 330-31.

drew was that states should set up machinery to cover the medical needs of this bottom third. It should be supported out of general taxes, the federal government to furnish half the money.

Minimum care for 40,000,000 would cost about \$400,000,000 a year (\$10 apiece). Some money is already being spent by local relief agencies; some is being spent by states and by the federal government under the Social Security Act, and more would be if the Committee's recommendations were followed. Some is being spent by the families themselves, though we saw early in the chapter that every fourth case of disabling illness in this group went wholly unattended. So not all the \$400,000,000 would be new expense, that is, new income for doctors, nurses, and hospitals. Presumably the part that is new would be taken on gradually, over a ten-year period, like the public-health expenses. The chief objection to this plan is that it seems to classify all 40,000,000 as paupers.

Adequate care. Above the 40,000,000 are wage and salary earners who are hard hit by any sicknesses which last more than a short time, but who do manage to spend in the aggregate enough money to secure fair medical service and who would not feel this expenditure very much provided it were collected as small regular insurance premiums. The Committee recommended insurance (medical benefits) for this large group. Within the group, the upper strata now get more medical care than the lower; they get it in a sort of rough proportion to their income, as the table early in the chapter showed. If under a health-insurance plan contributions were proportioned to income, people in the different strata would receive equal care while the average family in each of the various strata would continue to pay out about what it had before. This result would occur for the lower third of the population, too, if they were included in the insurance plan and taxed in proportion to their income; but the Committee argued that even this sort of payment was too much for the lower third to make and that they should be given medical service—at least a minimum service—free.

In contrast with the minimum service, at \$10 a year, planned for the bottom third, the Committee estimated \$20 or \$25 a year as the cost of adequate care. It pointed out that where insurance exists there is always a considerable admixture of public expenditure for hospitals and the like (if not as a subsidy to the funds). It pointed out that this is especially true of rural areas. It concluded, as Dr. Reed did, that it would be quite possible to have publicly provided health services even in the middle brackets, for instance, in rural areas. It suggested that the several states choose whether they prefer insurance or State medicine or a combination; that the federal government stimulate them to action by grants of perhaps a quarter of the

cost of medical services, withholding it only from a system which failed to give adequate service.³⁶

The final recommendation of the Committee related to cash benefits. It suggested that after a waiting period of one or two weeks a sick wage earner receive half pay, up to 26 weeks, and that these benefits might well be linked to the unemployment benefits. They would cost about 1 per cent of pay roll. Any sickness longer than twenty-six weeks was to be classed as invalidity, compensated at a lower rate under a system to be linked with the old-age benefits. This would cost around 2 per cent of pay roll when fully developed.³⁷

At a special meeting in September, 1938, the House of Delegates of the American Medical Association gave qualified approval to the federal recommendations, except that in respect to health insurance it would approve only hospitalization plans and medical indemnity insurance. While inclined to oppose State medicine, the Association conceded for the first time that relief clients need treatment they cannot always get from charitable doctors. If the government will pay for more treatments for relief clients, doctors will have more earnings; the same logic applies to families not on relief who are not now spending much for medical attention.

Though the Roosevelt Administration had given a good deal of publicity to the recommendations of the Interdepartmental Committee and Senator Wagner introduced a bill embodying them, Congress neglected the matter and the Administration did not press it. In the field of social security, moreover, Congress was in 1939 busying itself with improving the old-age annuity system. Its apathy about increasing the social security system may be partly explained, also, by the many criticisms leveled against social security—the large annuity fund, the delay in unemployment benefits, the complicated paper work for companies—and by the fact that the pendulum had swung away from reform in all lines. These criticisms symbolized a swing toward conservatism which pointed toward some delay before compulsory health insurance was inaugurated.

PRIVATE AND CO-OPERATIVE GROUP MEDICINE

One of the most prominent developments in the field of voluntary insurance in America is hospital insurance. The American Hospital Asso-

³⁶ See also L. S. Reed, "Legislative Proposals for Compulsory Health Insurance," *Law and Contemporary Problems* (Autumn, 1939), Vol. 6, No. 4, pp. 628-44.

³⁷ See also I. S. Falk and Others, "Some Problems in the Formulation of a Disability Insurance Program," *Law and Contemporary Problems* (Autumn, 1939), Vol. 6, No. 4, pp. 645-65.

One of the hardest things for workers to understand about the present unemployment insurance is that they cannot collect when they are ill.

ciation backed it in 1933, hoping to get more patients. In about three years it acquired about 2,000,000 members in sixty-odd cities. In New York City it is known as the "three cents a day plan" (six cents for a family). The money is collected through employers or groups. If the patient's doctor sends him to a hospital he is entitled, in the typical plan, to three weeks' care in a semiprivate room with nursing and laboratory service and the use of the operating room. If he has to stay longer, the hospital will reduce its usual rates somewhat. The New York plan gained members rapidly and increased its benefits after two years; but after four it found that members were over-using its services and benefits had to be reduced again.³⁸ However, in its fourth year it announced that it was consulting with the American Medical Association in the hope of being permitted to arrange to help its members pay their various doctors' fees. The Association had frowned on interference between doctor and patient, even in the way of insurance, but it later (September, 1938) voted, at a special session of its House of Delegates, that its local associations might approve corporate organizations which undertook to pay sick members cash with which the members might in turn pay their doctors.

A rational justification for starting insurance with hospital bills is that these are a heavy item, much harder for the family to pay than ordinary medical costs. However, specialists' fees, whether they occur in conjunction with the hospitalization or not, are often just as heavy. And while it is logical, if insurance is not to cover everything, to start with the most serious burdens, it might be a better plan to give benefits to any family whose illness ran over a certain number of dollars (perhaps in relation to its income), rather than to select hospitalization.

The New York City hospital plan also announced that it was considering how to extend its benefits to families below the middle-income strata which predominantly used it. If it succeeded in extending it, a certain number of cases would presumably have money to pay bills instead of making application as charity patients.³⁹ One way of getting the lower brackets in would be a reduction in price, made possible by lowering the cost through increasing membership, but the more likely method would be to turn to the typical health-insurance plan of charging in proportion to income.

³⁸ *The New York Times*, August 14, 1939, p. 17. Maximum free hospitalization was reduced from thirty days to the standard twenty-one.

³⁹ James Rorty, *op. cit.*, pp. 271-78, discusses hospital plans. As to the New York City area, he states that in January, 1939, the membership was 1,100,000 and rising rapidly (p. 271) and that another 3,500,000 were in a nondues-paying hospitalization plan, that is, they were indigent or close enough to it to receive hospital treatment when necessary from the City of New York (p. 273). Throughout the country 80 per cent of Associated Hospital Service members have yearly incomes of under \$2,500 (p. 272). See also M. J. Norby, "Hospital Service Plans." *Law and Contemporary Problems* (Autumn, 1939), Vol. 6, No. 4, pp. 545-59.

Group practice. Another development, not essential for insurance but paralleling it in point of time in this country, is the growth of group practice, the clinic method. The rich man goes to the Mayo Clinic and gets the benefit of contact with as many experts as his illness requires. The poor man, in going to a local charity clinic, such as the free dispensary or outpatient department maintained by some hospitals, is likely to find the same principle in use. Since the clinic is usually associated with a hospital or perhaps a medical school, both men and equipment are available. Charity clinics have been supplemented by clinics which charge small fees but are still in the charity class. The Union Health Center in New York City, established by the International Ladies' Garment Workers' Union in 1914, treats the members of various co-operating unions at low rates, with deficits made up out of union treasuries. There have recently appeared a considerable number of private clinics using group practice. Sometimes the organization is owned by one doctor who hires the others; sometimes it is jointly conducted by the members of the staff, sometimes co-operatively by the patients. Patients may regularly go to one physician as they do to a family doctor, but, of course, they use the whole staff as necessary. The patient pays for services received, as in private practice, but is likely to get more for his dollar. Though it is not insurance, this group-practice development has been condemned by the American Medical Association.⁴⁰

Group practice may easily become insurance by offering to accept patients who pay regular premiums in advance. Perhaps the best-known plan of this sort is the Ross-Loos Clinic in Los Angeles. It charges \$2 per family per month, like the New York City hospital plan, but for this, plus \$.68 average extra payment, it gives not only hospitalization but also complete medical service with the exception of eye-glasses and some expensive medicines and treatments. It is owned by the doctors.⁴¹

The American Medical Association has expelled members who participated in such clinics, a punishment which not only affected their reputation but also compelled other members to refuse them co-operation, for instance by withdrawing hospital facilities.⁴² In 1938 this boycott method was condemned by the Department of Justice as violating the antitrust laws within the District of Columbia, where a large co-operative project organized among federal employees was boycotted by the Association. This "Group Health

⁴⁰ Local medical associations have caused even public clinics to close down, when the depression made competition keener. Rorty, *op. cit.*, Chap. 12.

⁴¹ "Doctors, Dollars, and Disease," *Public Affairs Pamphlets*, No. 10. New York: Public Affairs Committee, 1937, p. 20. See also A. Mills and C. Guild, *The Voluntary Health Insurance Offered by the Ross-Loos Clinic of Los Angeles*. University of Chicago Press. Chicago. 1933 (a publication of the Committee on the Costs of Medical Care).

⁴² The opposition of the American Medical Association is described and protested in Rorty, *op. cit.*, Chaps. 4, 8, 10 and 11; and in Michael Shadid, *A Doctor for the People*. Vanguard Press. New York. 1939, which deals chiefly with the Elk City, Oklahoma, co-operative hospital founded by Dr. Shadid. See also Hard, *op. cit.* in the next footnote.

Association" is perhaps the best known among the co-operative insurance plans which rely on group practice.⁴³

Simple insurance. The general interest in insurance led the Association soon afterward (as we have seen) to approve the idea of medical indemnity insurance, that is, cash insurance benefits to pay private practitioners. It encourages local medical associations to set up such insurance plans. For instance, when the interest in the co-operative plan in the District of Columbia became great, the District's medical society announced a competing "Mutual Medical Service Plan." It, too, called for monthly payments, but it was to be confined to families earning less than \$2,500 and to single persons with less than \$2,000. All doctors in the District were to be available to members, but there would be no effort to increase group practice and doctors would be paid according to the number of treatments they gave.⁴⁴

The American Medical Association had previously helped the federal government set up an insurance plan among families who were resettled by the Farm Security Administration. Each family paid about \$25 a year into a county fund, but most of the money was lent by the government. Each family chooses a doctor, a member of the medical association. The doctors of the county send their bills to the county fund at the end of the month and the fund pays as much as it can of them, pro rata. Excessive bills are sometimes scaled down, too. A typical fund has 140 families, paying \$18 a year, served by 4 doctors who each therefore get about \$600 a year (5 per cent of the fund goes for administrative expenses). State-wide funds were also set up in North and South Dakota. Here the federal government at first lent the farm families \$12 a year; then it lent \$24, so that insured medical service could include hospital, dentistry, and drugs.⁴⁵

Many other voluntary plans have been set up in recent years.⁴⁶ Some advocates of group medicine prefer voluntary action, since it is more flexible and permits experimentation, and since it fosters self-reliance and also the

⁴³ William Hard, "Medicine and Monopoly." *Survey Graphic* (December, 1938), Vol. 27, pp. 606-9, 631-34. In 1940 the Circuit Court upheld the antitrust charge. The federal government had lent money to get the local plan started, on the ground that it promised to reduce sickness among federal employees and cut the government's sick-leave outlays. *Ibid.* Cf. B. D. Raub, "The Anti-trust Prosecution Against the American Medical Association," *Law and Contemporary Problems* (Autumn, 1939), Vol. 6, No. 4, pp. 595-605.

⁴⁴ Hard, *op. cit.*, p. 634. See also *American Medical Association Bulletin* (June, 1935), Vol. 30, pp. 81-91. This lists plans, proposed and operative, sponsored by medical associations as of February, 1935; emphasis was on installment-payment collection methods, not on insurance.

⁴⁵ Shadid, *op. cit.*, pp. 163-64, 222-23. Another description of these plans is given in Samuel Lubell and Walter Everett, "Rehearsal for State Medicine," *Saturday Evening Post*, December 17, 1938; another in R. C. Williams, "The Medical Care Program for Farm Security Administration Borrowers," *Law and Contemporary Problems* (Autumn, 1939), Vol. 6, No. 4, pp. 583-94.

⁴⁶ The more important ones are described in Rorty, *op. cit.*; *New Plans of Medical Service*. Julius Rosenwald Fund. New York. 1936; Shadid, *op. cit.*, Chap. 20 and previous; and M. W. Brown, "American Experimentation in Meeting Medical Needs by Voluntary Action," *Law and Contemporary Problems* (Autumn, 1939), Vol. 6, No. 4, pp. 507-15.

self-discipline of refraining from excessive demands on the system. Others argue that a voluntary period is a necessary forerunner of compulsory health insurance, for through it people become conscious of the problem and are more likely to co-operate in a later compulsory law. This was the argument of the Committee on the Costs of Medical Care, which, we have seen, also thought that compulsory insurance should be delayed until group practice was better established and until voluntary plans had set the example of full, rather than minimum, medical care.

Against this last point Falk ⁴⁷ argues as follows: even if at the outset compulsory insurance did not improve service, yet it would distribute the burden, and, moreover, it would offer the means of increasing and stabilizing professional income and of providing incentives to more efficient and qualified service. He doubts that voluntary plans would give uniformly high medical service, unless, indeed, government compulsion were introduced in another form to regulate them. He thinks, instead, that only by organizing to pay for medical care can society achieve improvement of service, because of the many possible savings which can result from large-scale methods and from a planned production of medical services.

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(See also "General Readings" at the end of Chapter 33.)

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⁴⁷ Falk, *op. cit.*, pp. 332-33. See pp. 322-31 for other pros and cons of voluntary and compulsory insurance. The resistance which established voluntary plans may make to the introduction of compulsory insurance is forecast by the use of this argument on the part of the American Medical Association. Rorty, *op. cit.*, pp. 59-60.

QUESTIONS

1. What are cash benefits? Medical benefits? Which of them deal with the more serious problem? Which is usually the primary aim of health insurance?
2. Is health insurance a share-the-wealth movement?
3. Illustrate the difference between health insurance and State medicine.
4. What is group payment? Group practice?
5. Is health insurance at all like life insurance?
6. Is health insurance based on neediness?
7. What is a European friendly society? Are there American friendly societies?
8. Are medical co-operatives like producers' co-operatives or like consumers' co-operatives?
9. Did health insurance come in soon after the Industrial Revolution, in Europe but not in the United States?
10. The British health-insurance plan is compulsory for wage earners but not for their dependents. Why do American proposals for compulsory health insurance differ from it?

BOOK
SIX

FOREIGN
LABOR
MOVEMENTS

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FOREIGN

LABOR

INTRODUCTION

• • •

MOVEMENTS

LABOR movements throughout the world are products of the capitalist system on which modern industrialism is built and which creates the wage-earning class. In the Western industrial countries where capitalism and technology have followed the same general course of development, the problems of industrial relations growing out of the wage system are similar. The institutions and practices of labor organizations at the same stage in the development of capitalism bear close resemblances to each other. Labor movements, with their economic, political, and co-operative organizations, develop around certain communities of interest among wage earners. Their varieties of forms are rooted at bottom on a common sense of status and a need for mutual protection. In meeting the need, various tactics and approaches make up the program of a developed movement. Some of these may appeal to the immediate need for a better and more secure standard of living; others, to the more ultimate sense of "class-solidarity," developing a theory for changing the wage system; still others may be a mixture of both.

In contests with employers, labor groups use strikes, picketing, boycotts, and other methods of attaining their ends. Through the use of such tactics, practices of collective bargaining become accepted institutions. Under modern conditions these institutions assume political implications, and finally the development of labor parties takes place. The movements in the various countries, responding to a sense of common economic interests, reach over national boundaries and form international connections, both trade-union and political.

Such activities of workers have evoked similar responses in various countries. Employers have organized strong associations to combat the growth of labor organizations. Repressive legal measures have been adopted which were at first prohibitive, were gradually broken down to permit labor organizations, and in fascist countries have become again prohibitive. As an intermediate technique between the opposing interests of employers and workers, there has developed a movement for protective legislation, presuming to act for the greatest good of the greatest number.

This does not imply complete uniformity in the history and present practices of labor movements. Since the movements have developed in varying backgrounds, and at varying rates of speed, as the industrial system underwent changes, there are special characteristics which are more marked in one national movement than in others. Each is affected by the institutions and cultures of the nation in which it arose. The foregoing chapters have described the chief characteristics of the American movement. This section will discuss the labor movements in selected foreign countries, emphasizing not so much similarities as differences. In a comparison of the American labor movement with those of European countries the different institutional and cultural backgrounds are apparent at once. The movements in Europe arose on the ashes of ancient regimes marked by class relationships and social institutions bearing the stamp of feudalism and later on of the domestic system, itself an outgrowth of feudalism. Hence the deeply rooted sense of "class status." The Industrial Revolution ushered in a new era which broke with the old system, but the break was not clear-cut and immediate. The facility of geographical movement of the population was not so great as in the United States. With the exception of minor internal migrations the movement of the population of the European countries in the decades following the Industrial Revolution was largely one of emigration, "making room" rather than immigration, "taking room."

Although the new capitalism upset old economic classes, there were a number of social and political institutions relatively untouched. For example, political power, or suffrage, was much further removed from the English and German than from the American worker. Greater restriction in class lines and more limited opportunity for the individual to rise out of his class have given to the European movements a more sympathetic interest in philosophies of an anticapitalist sort. In those countries, socialist movements have often attained influence earlier than have trade-unions. Curiously enough, a deep respect for and an awareness of authority have produced a state of mind more in sympathy with substitution of one authority for another rather than with compromise. Also, the influence of the Catholic Church and its extension into lay activities give rise in countries with large

Catholic populations to a section of organized workers dominated by church authority—the Christian trade-union.

Because of the combination of this set of complex factors, the foreign movements offer certain contrasts to the American, and by the same token the foreign movements differ among themselves. In the following descriptions of a selected number of foreign movements, certain common strains and differences will be traced in respect to these points:

1. Interest in collective-bargaining trade-unionism, and the development of a set of instruments to forward this end.
2. Determined effort to establish favorable legal status, beginning with the effort of employers through governments to exterminate economic organizations of wage earners and culminating in more recent instances of government extermination of unions.
3. Interest in political activity, originating in the effort for suffrage and ending with the establishment of labor parties.
4. Doctrinal bases of the various movements and the tactics growing out of differing philosophies.
5. Efforts of the movements to secure reform and protection for their class through influencing legislation.
6. The development of "labor institutions," such as co-operative enterprises, labor press, labor education—in short, a labor "culture."
7. Impact of the socialist and the fascist revolutions on the labor movement.

Keeping these broad aspects of the subject in mind, the following section will examine the development of the labor movements in Great Britain, Germany, France and the Soviet Union, with emphasis on those aspects of the foreign movements which offer the most interesting comparisons and contrasts with the American experience.

THE BRITISH 37 . . . LABOR MOVEMENT

THE British labor movement, often held up to American labor as an example of highest achievement, illustrates the growth of labor institutions in response to changing economic conditions and the adaptation of those institutions to the natural environment. For more than a century the British movement has been in the process of development. Until the depression of the 1920's, the years were marked by almost continuous progress in both the economic and political fields. A strong trade-union movement, covering the major industries and consolidating its strength through the Trades Union Congress, has been built up. The unions register under the law, their funds being protected against suits.

Employers give full recognition to the unions as agencies for negotiating collective agreements covering terms and conditions of employment. The unions have recognized legal status, although action is limited somewhat by legislation following the General Strike of 1926. The trade-unions form the backbone of the Labour party, which has risen to great power. A considerable body of protective legislation has been passed, largely through pressure from the labor groups. The government has rather wide powers of investigation and conciliation of industrial disputes.

These achievements grew to maturity during the expansion period of British industry, when there was not only a widening market for British goods but also a tendency to ease the competition for employment by steady emigration. Cut off from the Continent, British labor developed a move-

ment almost untouched by theoretical dogmas so marked in the German movement. It therefore has emphasized practical, live-by-the-day policies unhampered by problems of a theoretical nature.

The favorable position of Great Britain in world trade no longer exists. In a country so greatly dependent on the export market, the situation presents serious difficulties. These are reflected in the present position of the British labor movement, evidenced by the decline in total union membership, the relative weakness in the older industries, such as mining and textiles, the search for techniques of meeting the difficulty, all summed up in the dilemma which faced the Labour party in power.

BACKGROUND

Great Britain, as the cradle of modern industry, developed the first labor movement with a working-class point of view. There the Industrial Revolution first accomplished the separation of the functions of wage earners and employers. This separation was accompanied by (a) widening of markets; (b) introduction of new techniques, making possible machine production in a factory system and the use of power in industry, the improvement of transportation; (c) the enclosures of agricultural lands, thus dispossessing a large section of rural population and encouraging their movement into towns; (d) shifting of population to industrial centers, especially to the North; (e) the interference with the established occupations of handicraft workers, with widespread distress of this class; (f) rising political power of the "new capitalist" group and constant repressive measures against those attempting to stay the course of events.¹

There had been struggles between the classes in earlier periods, taking such forms as peasant revolts, or conflicts between journeymen and their masters in the guilds. But the *continuous* development of the labor movement dates from the struggles of those whose standards of life were threatened and degraded by the new economic dispensation of the Industrial Revolution.

This early, or *primitive*, stage of development was marked by the existence of local societies of workmen, of a friendly and convivial nature, meeting "to take a social pint of porter together" and incidentally discussing affairs of their trade and other matters of common interest. Often these groups came together without formal organization, met for a time, and then were discontinued. The members were usually skilled men of one trade, there being little intertrade solidarity. A few of these groups, the

¹ G. D. H. Cole, *A Short History of the British Working Class Movement*. The Macmillan Company. New York. 1927. I, 8.

wool combers, for example, managed to perform an economic function by forcing an increase in wages.

As the economic situation of the worker became more acute, the tone and purpose changed. There followed a wave of protest of these groups marked by such activities as the Luddite riots. To a great extent, these were blind outbreaks against a force that the workmen felt but did not fully comprehend. They followed a variety of leaders, some stressing reforms through factory legislation, others co-operative ventures; and still others advocating some form of Utopian or agrarian socialism. The French Revolution exerted a profound effect, with the result that "Corresponding Societies" of workmen were organized for the purpose of establishing a medium of contacts between those sympathetic to the ideal of the revolution.

The Combination Acts. The government countered these sporadic movements by a stringent policy of repression with such severe penalties that the period has been called the "age of the martyrs and the prophets." Between 1797 and 1820 a series of Acts² were passed prohibiting combinations of workmen and punishing such combinations as conspiracies against the state. Thus was inaugurated the long story of the struggle of labor organizations for free status under the law.

At this time the working class was so weakly organized that it was incapable of efficient, united action. The lead in the fight against the Combination Acts was taken by middle-class politicians such as Francis Place, the "radical tailor," and Joseph Hume, a member of Parliament. Their efforts were successful in 1824 when the Combination Acts were repealed. In the following year, however, in the face of rising unrest and strikes, a less liberal measure was substituted, placing considerable restriction on the freedom of trade organizations though their legal right to exist was established. Much of the activity of this period was of a political nature and was aimed at political reform measures. When the Reform Act of 1832 proved a disappointment to the workers, they turned their attention from politics to trade-union organization.

The Grand National and Chartism. Trade-unions of a sort had continued to exist while the Combination Acts were in force.³ Craftsmen in trades not immediately affected by the changed methods of production were often left free to continue their trade societies. Many of the unions transformed themselves into mere friendly, or benefit, societies to escape the penalties of the law. Since the Reform Act of 1832 enfranchised the middle class

² The more important of these were: Seditious Meetings Act, 1797; Combination Acts of 1799 and 1800; Six Acts of 1819. See Sidney and Beatrice Webb, *History of Trade Unionism*. Longmans, Green & Co. New York. 1920. Chap. II.

³ Colc, *op. cit.*, p. 59.

but not the workers, the latter expressed their disappointment by renewed efforts for trade-union objectives. Under the leadership of Robert Owen, the Grand National Consolidated Trades Union made a bid for the organization of all working-class groups in a "One Big Union," with a revolutionary program.⁴ Although the records are incomplete, the organization claimed a membership of about three-quarters of a million. The inclusion of the scattered organizations not a part of the larger movement brings the total membership of the trade-unions in 1833 to around a million, a total not reached again until forty years later.⁵

Employers, with the co-operation of public authorities, met the movement with "hard-bitten and relentless" opposition. The Grand National was shattered by a series of strikes and lockouts with which its inexperienced leaders and uninitiated members could not cope. After the onslaught only a few national unions and a number of local trade societies survived. The active working-class leaders again reversed themselves and turned their attention from trade-union to political agitation by throwing their energies behind the Chartist movement for parliamentary reform. Others became interested in the Owenite ideas of Utopian Socialism and in the co-operative movement.

While on the surface Chartism appeared as a continuation of the demand for political democracy unanswered in the Reform Bill of 1832, its basic objectives were economic.⁶ It marked the entrance of the wage-earning class, the new industrial proletariat, into politics on a distinctly class basis. As R. H. Tawney says: "Its essence was an attempt to make possible social reconstruction by an overthrow of the political oligarchy . . . it was at once the last English movement which derived its inspiration and phraseology from the inexhaustible arsenal of eighteenth century Liberalism and the first political attack on the social order which had emerged from the growth of capitalist industry."⁷ The movement for industrial unionism under Owen, as well as Chartism, meant that workers were conscious of themselves in the new economic order, and that they organized themselves for defense purposes before other classes were aware that defense against ruthless pressure of the new industrial system was necessary.

TRIUMPH OF BUSINESS UNIONISM

When in 1848 the House of Commons "laughed out" the last Chartist petition, the struggle for social reconstruction through political means was

⁴ Webb, *op. cit.*, pp. 125 and *passim*.

⁵ G. D. H. Cole, *British Trade Unionism; Problems and Policy*. Labour Research Department. London. 1924. P. 3.

⁶ Raymond Postgate, *Chartism and the Grand National*. Labour Research Department, London, 1920, gives an analysis of this connection.

⁷ R. H. Tawney, *The British Labor Movement*. Yale University Press. New Haven. 1927. P. 28.

quelled, and organized workers turned to trade-union methods. Two generations later the demand for political action reappeared in the agitation for the organization of a Labor party. Defeated both as revolutionary unionists and as Chartists, the working class turned to the practical task of safeguarding its own standard of life. Visionary schemes, middle-class idealism, and possibilities of rapid changes had proved disillusioning. Therefore, in politics the workers "were led away by Mr. Gladstone into the Babylonian captivity of Liberalism; in industry, too, they abandoned the idea of a working class in revolt. . . ." ⁸ Some of the trade-unions remaining from the Owenite period had had time to revive themselves, and had begun to combine into national bodies. The Amalgamated Society of Engineers, organized in 1850-51, was characteristic of the new development. During the next decade, such organizations were founded in textiles, mining, and in other trades. The new unions were unromantic, practical organizations, repudiating all revolutionary aims. They were craft unions, composed almost entirely of skilled workers, bound together by the need for mutual aid in protecting their standard of life. This, in the last analysis, involved safeguarding of the craft standard. By providing sick benefits, unemployment benefits, strike benefits and others which would prevent a worker's acceptance of work at lower than the standard rate paid to his fellows, they aimed to protect the standards of the trade. This meant inevitable emphasis on craft unity, since men of the same skill were paid the same rates. In order to protect the crafts, prevention of too many workers entering the trade was practiced through a system of regulated apprenticeship. Thus a system of craft unionism, in which workmen took pride in their craftsmanship and tended to look down on those of lesser skill, was built up. According to Sidney and Beatrice Webb: "Their [engineering societies] records bear traces of the old idea of the legal incorporation of separate trades, rather than any general union of 'the productive classes.' The generous but impracticable 'universalism' of the Owenite and Chartist organizations was replaced by the principle of the protection of the vested interests of the craftsman in his occupation." ⁹

Pure and simple unionism. The members paid high dues to build up benefit funds on which they depended in times of unemployment, illness, or old age. Low-paid workers could not pay the assessment and so remained outside the unions. The unions devised sound financial methods, built up reserve funds, and became almost as "materially-minded as the employers with whom they bargained."

⁸ R. Page Arnot, *Trade Unionism: A New Model*. Labour Publishing Society, London, 1911, p. 7.

⁹ Webb, *op. cit.*, p. 217.

Except in rare instances strikes were discouraged. The leadership was conservative and concerned with the needs of the hour and such small gains as were possible. There was no challenge of the capitalist control of industry. That control was accepted and the functions of the unions came to be those designed to secure for the worker some measure of protection against the hazards of the system. This is the "pure and simple" trade-unionism which Samuel Gompers stamped on the American unions in the 1890's.

The co-operative movement underwent a similar transformation in ideals and practice. The origin of the movement was a Utopian one, motivated by a desire to escape the evils of the industrial system, not by challenging the system directly but by eliminating its miseries through establishing self-owned and self-directed workshops and colonies. Under the changed conditions the Co-operative Societies adopted a more practical plan of attempting "to raise wages by lessening the cost of living" through purchases from a co-operative store. They developed a thriving business organization, catering, again because of the necessary surplus to be saved from wages, to the skilled and better-paid workmen.

Thus the unions consolidated their strength during the 1860's and 1870's. It was not a particularly easy task, for employers were no more friendly to unionization than they had been in the earlier period. There was also the unfavorable legal status of the unions. The "reasonableness" of the leadership of the Amalgamated Societies helped pave the way for improvement of the legal position by the Acts of 1871, 1875, 1876. The unions were given civil status, legal protection to trade-union funds was granted, the right to strike and to engage in peaceful picketing was also recognized.

The need for general organization resulted in the foundation of the Trades Union Congress in 1868. Thus both structurally and legally the way was opened for building up collective bargaining on a national scale, and for co-operation on matters of mutual concern, regardless of trade or industry.

Developing philosophy. Politically, the unions were inactive, particularly after they achieved improvement in their legal status. In the early part of the period they co-operated with Karl Marx's International Association of Working Men (1864), an organization with a radical, political program. According to Cole, the "British leaders who subscribed to these doctrines probably saw in them no more than expressions of international friendship of the workers."¹⁰ When the aims of the International were known and were attacked by the press, the British trade-union leaders came in for their share of the abuse, at a time when they were actively engaged in proving their "respectability." They withdrew, causing Marx to comment that they

¹⁰ Cole, *A Short History*, II, 87.

had "offered up the principle of Trade Unionism on the altar of middle-class legitimisation."

As time went on, the slogan of "no politics in the union" was the predominant note, to undergo change only after the "rise of the unskilled" in the eighties and nineties and the shock of the Taff Vale decision in 1901.

The economic environment of Great Britain at the time was peculiarly suited to the development of this type of business unionism. The years 1860-90 were the "Golden Age" of British capitalism. England at first had practically a monopoly on the new technique of production and was the leading producer of coal and iron in Europe; improvements in transportation opened up the world for exploitation. British industrialists were in a position to make the most of these opportunities. Industry and trade flourished, exports increased, foreign investments multiplied, and standards of living rose. There was almost universal applause for the system of free enterprise which made the development possible. Social reform measures served to temper the keen edge felt by those in the lower grades of skill.

The workers' movements shared in the common acceptance. Expanding trade, with rising prices, gave the unions a strong bargaining position. "Lectured by economists on the folly of resisting the laws of political economy, trade unionists took their advice. . . ." ¹¹ They made their bargains with the Golden Age. They set about to organize in such a way as to get the best possible terms under prevailing market conditions. They accepted the individualist economics, followed the Liberals in politics, and developed a system of collective bargaining by whatever means came to hand. The Victorian virtue of self-help was taken over by the workers in the organization of their friendly societies and co-operatives, all of which increased the sense of well-being for that group of skilled workers whose wages permitted payment to such funds.

Employers, anxious to make the best of their opportunities, were less pressed for capital to be saved from their business. They could afford to ease off and to make compromises with the unions as long as the unions "worked with and within" the capitalist system and did not attempt its overthrow. The old spirit died hard, but by degrees the idea of the common interest of employers and employees made possible an area for collective bargaining.

THE NEW UNIONISM: SOCIALISM AND POLITICAL ACTION

Even in the prosperous period the monopoly position of British industry was beginning to be challenged. The United States was becoming more self-sufficient and excluded British goods by tariff regulation. Many other customers were starting to produce for themselves. Germany was beginning

¹¹ Tawney, *op. cit.*, pp. 20-21.

to be a powerful rival for world trade. Internally there was a decrease in export trade, with the resultant unemployment and tension characteristic of a depression period. In the late 1880's and early 1890's the situation grew more acute, with the result that the trade-union leaders were faced with a new set of problems growing out of changed economic conditions. During those years a "new unionism" arose to challenge the complacency of the old. With unemployment and falling wages, resulting from the setback of the monopoly of their employers, pressing on the workers' movements, the new generation questioned the whole basis of the capitalist system.

Changing technology was affecting seriously the position of the craftsmen of the earlier period, and their unions were objects of attack because they did little to cope with the increasing number of unskilled workers. The crying need for organization for the protection of these groups was emphasized by publication of a series of studies of the industrial areas which showed appalling conditions in the sweated industries, sections altogether untouched by either the institutions or interests of the "benefit unions."

Agitation for "new unionism." London match girls went out on strike in 1888 and with the help of middle-class sympathizers won a concession from their employers. Ben Tillett and Tom Mann organized the dock workers and carried on the historic strike of 1889. Later, the gas workers, agricultural, and general railway workers were brought into unions. These workers were less able than others to protect themselves by collective bargaining, and were therefore interested in state intervention.

The tactics and methods of work of these unions were in contrast with those of the older unions. The latter had counted on holding members in season and out by means of friendly benefits. Members would continue union affiliation for those benefits, regardless of the ability of the union to aid them in the industrial struggle. Such unions required high membership fees and guarded their treasuries against drains from strikes. The "new unionists" disparaged friendly benefits and advocated low dues commensurate with the wages of the unskilled. They concentrated on using their funds for carrying on strikes and organizing the unorganized. Although bread and butter issues were not disregarded, they produced a program, ultimately socialist, to appeal to the solidarity of the wage-earning class. In their general appeal, they were able to make at least small progress among the "black-coated and white collared proletariat" as well as with the army of low-paid industrial workers.

A series of difficult strikes and a trade depression acted as brakes on the movement, but on the whole the unions increased in numbers and influence. Another step in consolidation was taken at the formation by the Trades Union Congress of the General Federation of Trade Unions, a co-

ordinating authority for the whole trade-union movement. Both new and old unions joined, and by 1900 the differences between them were less obvious than before, both having had the extreme edges of their policies polished down. The G.F.T.U. did not fulfill the ideal of becoming the "One Big Union" but rather concentrated on building up a system of mutual insurance against strikes and lockouts.

The Taff Vale decision. The other development was the decision rendered in the *Taff Vale Case*.¹² By the Acts passed in the 1870's referred to above, the unionists thought they had a safe legal position. Nevertheless, when the Taff Vale railroad sued not only striking workmen for breach of contract but the union to which they belonged, and was awarded £23,000 in damages, the unionists received a severe jolt. The decision came at a time when spokesmen for the unions were saying that the unions were doomed if they entered politics, that the old "Lib-Lab" (labor co-operation with the Liberal party) method of labor representation in Parliament was sufficient for the need. Efforts of a small, tireless group had resulted in the formation in 1899 of the Labour Representation Committee, which was wavering on the question of independent political action. The Taff Vale decision turned a theoretical discussion into an exceedingly practical one. As Tawney says, thanks to the judges, the unionists realized they were doomed if they did *not* enter politics.¹³ Independent action was undertaken and with increasing success. The Trade Disputes Act of 1906 rescinded the decision of the courts and redefined the legal status of collective action. The Labour Representation Committee took the name Labour party in 1906 but did not adopt a socialist platform until after the World War.

Fruits of political action. Thus did labor enter the political arena. It won two seats in Parliament in 1900, twenty-nine in 1906, and forty-two in 1914. During that time the unions increased their political action by promoting a variety of types of social legislation. In addition to the Trade Disputes Act of 1906, some of the rewards were the Trade Boards Act, establishing minimum wages for certain sweated workers, the State Insurance Act, an old-age pension law, eight-hour day in coal mines, the Trade Union Act of 1913, reversing the Osborne Judgment of 1909 which forbade the automatic use of trade-union dues for political purposes. From this period on the labor movement must be examined in terms of the dual activity in the trade-unions and the Labour party, intermingled, since the party was made up of unions whose members entered in blocks, yet separate as each worked

¹² For a full discussion of the legal significance of this case, see Sidney and Beatrice Webb, *Industrial Democracy*. Longmans, Green & Co. New York. Introduction to the 1902 edition, pp. xxiv, and *passim*.

¹³ Tawney, *op. cit.*, p. 28.

out practices and policies adapted to its purposes. The new legislation brought the unions into a close relation with the state, since the administration of state insurance funds was shared by labor groups. The Trade Boards for regulating conditions likewise involved collaboration of state and unions. Conciliation and arbitration functions were undertaken by state agencies. It was a relatively short step to ideas of state socialism and the demand for nationalization of industries.

THE PREWAR YEARS

In spite of somewhat outstanding parliamentary success and increasing membership in both trade-unions and Labour party, the years preceding the World War were times of unrest and uncertainty.¹⁴ Except for a few short periods of industrial prosperity, when gains through collective bargaining were possible, the unions were inactive. From the turn of the century, sharpened economic rivalries and antagonism outlined the imperialistic contest which had begun two decades earlier. Internally, this meant a fall in real wages of the workers, with the accompanying depression in the standard of living. Investigations made at the time indicated that from 20 to 30 per cent of the population were below the subsistence level.¹⁵ In some industries there was still a struggle over recognition of the union. Against all this a section of the union movement made vigorous protests which were backed up by dramatic action. The frequent spontaneous mass movements upset the "old-line" union policy and tended to change the emphasis of union functions. Again, a "class-conscious, militant, and aggressive" unionism championed the ideal of the union, not as a mere defender of the standard of life, but as a means of transforming the social and economic system. The old leadership, both political and economic, found itself shaken by new ideas of Syndicalism, Industrial Unionism, Direct Action, as means of socialization of industries. Tom Mann, who had led the dock workers in 1888, returned from Australia filled with enthusiasm for the Industrial Workers of the World. He went up and down the land preaching anew the gospel of class solidarity and the "One Big Union" with a revolutionary philosophy.

The new point of attack was the insistence that the function of collective bargaining, or business unionism, should be to become an agent for workers' assumption of the control of industry. The contest centered on the existing structure of the unions. There were hundreds of craft units, overlapping each other in such a way as to make unified industrial action impossible. A movement to amalgamate the crafts in each industry, and to work out strategy through a system of shop committees, the "shop stewards,"

¹⁴ Cole, *Short History*, III, 76-77.

¹⁵ J. H. Richardson, *Industrial Relations in Great Britain*. International Labor Office. Geneva. 1935. P. 40.

was inaugurated. This met with opposition from the old-fashioned leaders and was only partially accomplished at the outbreak of the World War.

This period, says Cole, is "a story without an ending." The outbreak of the War changed the situation completely. Unrest probably continued, but it perforce had to find a different outlet.

THE WAR PERIOD

Conditions were so abnormal during the War that what was done should not be taken as indicative of natural trade-union development. In spite of previous sympathy with an internationalist and antimilitaristic point of view, once war was declared, British labor, like that of all belligerent countries, was overwhelmingly on the side of the nation. Workers entered military service with the blessings of their trade-unions. Those who remained to carry on the essential services declared a truce in industrial conflicts. By degrees, the unions were requested, or forced, by the government to sacrifice trade-union conditions for the common safety.¹⁶ Agreements were made to suspend practically every customary rule of union protection to members in return for the promise of high wages and the resumption of trade-union conditions immediately after peace should be declared.

Status of unions. In spite of the depression of union conditions, in return for which the government was unable on many counts to fulfill its part of the agreement, the war emergency resulted in greatly increased status for the unions and union leaders. According to the Webbs: "This enormous draft on the patriotism of the rank and file could only be secured by enlisting the support of the official representatives of the Trade Union world—by according to them a unique and unprecedented place as the diplomatic representation of the wage-earning class."¹⁷

Also, the fact that the withdrawal of trade-union conditions was made possible by government fiat; the failure of the government to restore union conditions after the War; the operation of the espionage system and the abrogation of civil and trade-union liberties "gave the same sort of intellectual fillip to Trade Unionism and the Labour Party in 1915-1919 that had been given in 1901-1913 by the *Taff Vale Case* and the *Osborne Judgment*. At the same time the Government found itself compelled, in order to secure the cooperation of the Trade Unions . . . to accord to them, and to their leaders, a *locus standi* in the determination of essentially national issues that was undreamt of in previous times."¹⁸ Trade-union membership

¹⁶ For details see Webb, *History of Trade Unionism*, Chap. IV; also W. Milne-Bailey, *Trade Unions and the State*. George Allen & Unwin. London. 1934.

¹⁷ Webb, *History of Trade Unionism*, p. 637.

¹⁸ *Ibid.*, p. 645.

grew rapidly, from 4,135,000 in 1913 to the highest point ever reached, 8,339,000 in 1920, much of the increase being among women and white-collar workers. Coming towards the close of the War was the report of the Whitley Committee, outlining a plan for Joint Industrial Councils of workers and employers with a wide range of subjects for consideration. This stimulated the shop-steward movement, begun earlier and emphasizing the significance to the worker of certain aspects of control of production.

POSTWAR

At the end of the War, British labor was faced with three alternatives. The unions might remain passive, content with their enhanced position gained by their co-operative spirit during the War, re-establishing the pre-war union rules, and maintaining the rates and scale of benefits through negotiation with employers. The Labour party might continue its role of protagonist for social insurance and co-operate with the government in power. Economic conditions, however, made that alternative practically impossible. The heavy industries in which the unions were strongest suffered serious decline. Rationalization in these same industries undermined the position of the craftsmen, so that the unions were forced to seek other alternatives. They could advocate the use of their political and economic power to bring about a revolutionary change in the ownership and control of industry, or they could demand as their right a share in the planning and responsibility for carrying out economic and rationalization policies for the nation.

Period of militancy. For a few years after the close of the War it seemed that labor would seek the "revolutionary way out." A series of strikes in 1918-19 brought concessions from the employers. A mining crisis in 1919 resulted in the appointment of the Sankey Coal Commission, which recommended the nationalization of the industry. The miners threatened direct action, a strike to force the government to take over the industry. A railway strike in the same year resulted in gains for the workers, in spite of the mobilization of the power of the government to put down the strike. In 1920 the unions threatened "no co-operation" when the possibility loomed of British intervention in a possible clash between Russia and Poland. Labor "councils of action" were formed throughout the country. When the ministry reversed its policy and war was averted, the power of labor was at high tide. Also, the Labour party adopted a program for the socialization of industry and a new Constitution permitting individual membership.

A counteraction on the part of employers was launched in 1921. The miners were locked out. They appealed to the "Triple Alliance" of miners,

railway, and transport workers to join them in a sympathetic strike. Internal misunderstanding arose, and the strike was a failure. The engineers also were locked out in 1922 and suffered a serious loss. Unemployment rose rapidly. Membership in the unions dropped from nearly nine millions in 1920 to six millions in 1922. Curiously enough, shortly thereafter the Labour party, with a minority in Parliament, was called upon to form a ministry. The government struggled through nearly a year of increasing economic difficulties, and fell on a relatively unimportant issue.

Again in 1926 the unions looked as if they might choose the revolutionary alternative when the executives of the unions called the general strike. The strike was not undertaken with any view of challenging the existing order directly. The basic issue was the resistance of the miners to a wage cut, and the decision of the other unions to stand by the miners. The leaders claimed that it was purely an "industrial strike." But the unity of action and the solidarity of the workers, for even a short period, occasioned a shock to the system, in which the government's authority was challenged and the strike inevitably assumed a highly political nature.¹⁹ Some commentators here observed that the realization of this situation was the reason that the leaders called the strike off prematurely.

The aftermath of the strike cooled whatever revolutionary fires might have been kindled. Very soon thereafter the Trades Union Congress signified its preference for the third alternative, that of seeking a place in the regulation of economic policy, by entering the "Mond-Turner conferences" for the progressive rationalization of industry, through co-operation between capital and labor.

New legal restrictions. In addition, the Trade Disputes and Trade Unions Act of 1927 materially altered the legal status of union activity and the relation of the unions to the Labour party. This Act put serious limitations on strikes, holding that any individual engaged in an industrial dispute may be liable to criminal proceedings, if because of a broken contract, "injury, danger, or great inconvenience" to the community is likely to result; that the strike is illegal if it has any other purpose than the furtherance of the interests of the worker in the particular industry involved; that a strike is illegal if it is designed to coerce the government or would be likely to inflict hardship on the community. Restrictions on picketing were likewise imposed. Civil servants were forbidden to ally themselves with the labor movement.

A more practically serious section struck at trade-union financial support of political activity. The Trade Union Act of 1913 established the "contracting-out" policy, meaning that union funds could be used for po-

¹⁹ For a discussion of this point, see Milne-Bailey, *op. cit.*, Chap. VII.

litical purposes, unless the members claimed specific exemption from making such contributions. The 1927 Act reversed this process to "contracting-in," requiring that members of unions having political funds sign statements that they were willing to contribute; otherwise their dues could not be so diverted. Since the Labour party depended almost entirely on the unions for this somewhat automatic financial support, this struck a body blow at party membership as well as at party finances, thus breaking the direct connection between the unions and Labour party. In spite of this setback the 1929 election indicated that the attack on the funds of the Labour party had not been so disastrous as was prophesied. The party was so successful at the polls that it formed a government for the second time, but without having a majority over the Tories and Liberals. It did not dare to challenge the existing order, and in reality functioned as a coalition government. The development of the economic crisis provided the issues on which it was split and the National Government formed. The program of the party adopted at the 1928 convention has a different, more temperate note from that of 1918 referred to above.²⁰ Later programs have made no significant departure.

CURRENT ISSUES

The labor movement in its present phase is faced with a series of problems of practical nature, having to do primarily with the adjustment of the unions to the general conditions of industry and with the crisis in the international scene. The first set of problems is concerned with matters of numbers and trade distribution of members, adjustment to the greatly prolonged period of unemployment, shifting of the density of trade-union strength from the old to the new industries, problems of structure, and relationship with employers. These are but superficial aspects of the deeper and more fundamental issue of the philosophy and strategy of the unions and the Labour party in times of world upheaval and the shattering of many of the established economic and political institutions. The attitudes of the movement to the specific problems as they emerge indicate to some extent its basic philosophy and foreshadow what may be expected by way of future policies with regard to the State, to the control of industry, and to the international scene.

Declining union strength. The first category of problems presents more simple issues. The records show a severe decline in trade-union membership since 1920 (from approximately eight and one-half to three and one-half millions), interrupted only for short periods during a slight break in the

²⁰ The 1918 Programme is published under the title *Labour and the New Social Order*; the 1928 one is entitled *Labour and the Nation*.

depression. Increases have been reported for 1933, 1934, 1935, but the gains are far from balancing the losses. The decreases have come mainly in the old centers of trade-union strength, among miners, shipbuilders, cotton, iron, and steel workers, and other workers in the basic industries. The increases have come in such trades as artificial silk, printing, paper, leather, glass and pottery, the distributive industries, and more recently, the munitions industries. The basic industries are located in the North and West, the ancient stronghold of unionism. The newer industries and the expanding ones have been established largely in the South, where traditions of unionism are not so deeply rooted, a situation not unlike that in the United States. The increasing number of women in these industries creates an additional union problem, since the old union strongholds were mostly in the trades in which men predominate. In fact, the problem of organizing the unorganized and the need for militant campaigning for this end have led certain observers to wish that British labor had "the energy and will of the C.I.O."

Rationalization of industry has created anew the issue of amalgamation of the existing unions, many of which are almost structural accidents. There is a trend toward industrial organization, but it is significant that, at the 1936 convention of the Trades Union Congress, a resolution on this question was dealt with in summary fashion by the leaders on the basis that it is necessary "to tread lightly where union structures are concerned."

Collective bargaining setup. Over a period of years a comprehensive system for collective bargaining has been developed. Employers belong to the associations of their trades and through them make collective agreements with unions in those industries. There is great diversity in the agreements reached. Many of them are national in scope while others cover certain districts. Often a national agreement may make certain special conditions for districts. Wages and other conditions vary greatly, both as to amount and the method of payment. Agreements have embodied in them certain basic principles summarized as follows by the Commission on Industrial Relations in Great Britain:²¹ (1) Basic changes in wages and working conditions are negotiated between national union and national employers' associations. (2) If the parties fail to reach agreement resort is made to some type of impartial agency, whose decision is generally followed, although the parties usually do not agree beforehand to do so. (3) Local disputes which cannot be handled by the individual worker or employer are passed along to union and employer committees who are not directly concerned with the issue. (4) While the agreements provide for no stoppages until the machinery for settling the controversy has been used, there is no actual statutory regulation

²¹ *Report of the Commission on Industrial Relations in Great Britain*. U. S. Department of Labor. Government Printing Office. Washington, D. C. 1938.

to that end. Moral force is the only control. In fact, there is quite positive opposition to the idea of legislating for that end.

A new war emergency. In spite of a general policy of trade-union recognition, employers have developed a series of schemes of welfare capitalism, especially in the new industries.²² The acuteness of the economic situation has made it difficult for the unions to gain improvements in conditions through old-fashioned collective bargaining. Pressure has been put on both unions and Labour party to "whittle away" the standard of union regulations and the amount of social protection at one point after the other. In 1939 this was accelerated by war conditions under which the unions are being called on to gird for the struggle. In contrast to the 1914 period, governmental action limiting indirectly the ability of the unions to seek advantages during the present War has been taken.²³

Although the labor movement has fought against this tendency, the political party, the unions, and the co-operatives have been torn over the question of a permanent way out. The logic of their theory is that of socialism, but their practices have been those of social reform. They have based most of their actions on the "false premise of a capitalist recovery and the probable prosperous development of capitalism into socialism."²⁴ As Professor Laski says of the Labour party,²⁵ the whole movement is in need of making a decision on whether it is to be social-reform or socialist in character.

The reform tendency has been challenged a number of times by opposition groups. The "minority" movement of communists has taken the offensive in both the Trades Union Congress and the Labour party. Although the extreme left-wing has been persistent, it has not achieved endorsements of its proposals. Left-wing non-communist elements have been active also, but have not commanded influence among large numbers of trade-unionists and Labour party members. The Labour party has excluded communist memberships, and has opposed united-front programs to the extent of expelling Stafford Cripps' Socialist League for insisting upon united action. The Independent Labour Party withdrew voluntarily after the formation of the National Government in 1931.

Exclusion policies by unions are more difficult to practice. This raises the question of the relations of the unions to the Labour party. The unions

²² For an account of employers' organizations and activities, see Richardson, *op. cit.*, Chap. III; also, H. A. Marquand, *Industrial Relations in the U.S.A.* Oxford University Press. London. 1934. P. 103.

²³ For example, efforts to control prices to keep costs down and to prevent pressure for wage increases, and the limitations of job seeking or labor recruiting outside government employment agencies.

²⁴ J. T. Murphy, *Modern Trade Unionism*. George Routledge & Sons. London. 1935. P. 115.

²⁵ H. J. Laski, "The Labour Party Conference," *The Nation*, 141 (December 18, 1935), 708-10.

form the basic membership, and they supply, either directly or indirectly, most of the financial support, by contribution to party funds and by paying the salaries of union officials who take seats on the Labour bench in Parliament. At a good many times in the past, however, the unions and the party have gone in different and contradictory directions. The unions have been friendly on the whole to the Soviet Union; the party has taken the contrary position within the Second International. When the Labour government was in office, and with only slight protest, took part in efforts to reduce wages, the unions offered stubborn resistance. Finally, when the economic crisis further sharpened the issues, it was the actions of the unions which finally pulled down the pillars of the labor government in 1931.

On the other hand, the unions have followed a policy of "gradualism," and have refused to accept their socialist creed as pressing. The Trades Union Congress in 1933 passed a resolution condemning the movements of the National Government for wage reduction, congratulating the workers of the United States on the affirmation of their collective bargaining rights under the New Deal, and expressing hope that the British government would pursue a similar policy. A month later the Labour Party Conference rejected the implications of these conclusions. The spokesman for the Executive Committee stated: ". . . the real question, the real economic question which faces the world is whether you are going to have a socialist system of society, or a form of economic dictatorship ruled by the leaders of the capitalist world today, but the solution is the socialist solution."²⁶

The following year a more amplified statement of the same sort was made, but there was some dissent by trade-union leaders warning against "chimerical schemes" and suggesting that "he who pays the piper, calls the tune." By 1935 the unions made a clear statement at the Party Conference that it was they who dominated the party and would dictate the policies. Later conferences have gone even further in swinging to the right. The recently expressed sentiment of the "high command" in the union movement has been rather overwhelmingly a "coalition with capitalism policy."

The attitude of British labor toward international issues is colored by the character of its domestic policies. One real issue has been the effect of European dictatorships on the British movement and the world scene. The success of Hitler in Germany caused considerable uneasiness among the union leaders, who sent a delegation to Germany shortly after the National Socialists attained power. In the report²⁷ to the Trades Union Congress late in 1933, Secretary Walter Citrine made as the most emphatic point the relatively short experience of the German worker in developing democratic institutions and methods. The moral was that in the country which "mothered

²⁶ Statement of Arthur Greenwood, *Report of Labour Party Conference*, 1933, p. 30.

²⁷ "Dictatorships and the Trade Union Movement," *Report of Trades Union Congress*, 1933.

all Parliaments," the use of unconstitutional or extraparliamentary methods would not be tolerated. Democratic institutions are assumed to be too deep a part of British life for the capitalist class to wish to throw them aside, no matter what pressures might be exerted. Growing out of this attitude was the policy of ignoring the British Union of Fascists of Sir Oswald Mosley.

Subsequent aggression of the fascist dictatorships has raised more serious issues on which a passive attitude has been impossible. First the Italian exploits in Abyssinia and later the transformation of the civil war in Spain into an international fascist contest tightened the lines. The official government move to place an embargo on arms to Spain was opposed by a section of the labor movement, but there was no official labor condemnation of the embargo. Later, agitation to affect the government's stand on nonintervention resulted in appeals to the government to bring pressure for League of Nations protection for Spain.

Meanwhile the rearmament program of the government was being extended. Minority efforts to induce the labor movement to censure these war preparations were unsuccessful. One explanation of this attitude is that rearmament stimulated shipbuilding and other basic trades which were practically at a standstill for a number of years. Therefore full employment was possible for sections of the trade-union world which had little recent employment. Another explanation is the underlying assumption of the officials and of a large section of the rank and file in labor movement with regard to the nature of fascism. The theory is that fascism is a result of certain special practices of Italy, Germany, and Japan, not the normal outgrowth of capitalism. The threat of fascism is against democracy, not particularly against the labor movement. This being assumed, it is necessary to arm to defend democracy. Even a labor government in power would need the protection of heavy armaments against fascist aggressors. The 1939 Conference voted overwhelmingly to support the government's conscription policy and supported the entry into war.

On the international as well as the domestic scene, British labor reflects but slightly its technically socialist platforms. On the whole, when crises come, labor tends to follow where a conservative government leads. A minority opinion in Great Britain is that this policy will lead and has led labor again into the position of supporting another war of capitalist making and objective. This, however, receives relatively little place in official actions of the trade-unions, which are committed to supporting the war against Germany.

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QUESTIONS

1. What is the origin of British trade-unions?
2. How do you explain their nebulous and incoherent program in the early period?
3. What developments in industry gave rise to collective-bargaining unionism?
4. In the development of the British labor movement, do you discover a curve which follows the direction of industrial conditions?
5. Outline the legal struggles of the British unions. Does this story have any bearing on the development of political tactics?
6. What has been the relationship of the unions of the co-operatives? Why have periodic conflicts occurred?
7. What factors contributed to the adoption of a policy of independent political action? To a socialist platform?
8. What does Professor Laski mean when he says that the British labor movement needs a C.I.O.?
9. Are there any problems of special interest involved in the leadership of the Labour party?
10. To what extent was the general strike of 1926 "an uprising of the proletariat"?
11. What has been the position of the "minority movement"?
12. Explain the official attitude taken by the Labour party to fascism. Is it likely to change?
13. Someone has said that British labor acts as if it expected a return of capitalist prosperity. What does this mean? How valid is it? What events may increase or decrease this attitude?

LABOR

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PRE-NAZI GERMANY

THE development of the labor movement in pre-Nazi Germany offers a number of contrasts to the British experience. In Great Britain the initial strength of labor organization was achieved in the economic field through trade-unionism; then, the unions turned to political action as a means of protecting their economic position. In Germany a strong political, Social Democratic party was organized first, and for a number of years dominated the rising trade-unions. For a long period both political and union sections in Germany were dominated by intellectual leadership, starting with the wide, although somewhat divergent, influence exercised by Marx and Lassalle. In Britain, the unionists themselves soon assumed control. While the British union movement achieved practical unity in its middle period, the German one was split into three ideological sections, the Social Democratic, or "free," unions, the Hirsch-Duncker, or "liberal democratic" unions, and the Catholic, or "Christian" unions.

Labor in Germany faced a somewhat different economic setup. Although both movements contended with conditions of a young and militant capitalism, such as vigorous employers and prohibitive legal restrictions, the German employing class consolidated its position more rapidly. The cartel movement and the growth of employers associations forced the trade-unions to adopt policies for consolidated action without rigorous conflicts over problems of amalgamation. Therefore German trade-unions tended to unify and to centralize power at the top, especially power to negotiate national wage and

hour agreements. In 1930, for example, when there were 1,100 trade-union units in Great Britain, there were 127 in Germany.

A strong bloc of national unions made possible the development of an elaborate set of union institutions,¹ more inclusive than those of any other national labor movement. Benefit schemes, a strong and influential labor press, disciplined action in the political field, labor secretariats (protective groups for wage earners), employment agencies, labor education, international activities and work with special groups such as women and youth, constitute a partial list of these activities.

With these sources of strength, the labor movement was the pivotal agency in building up an economic and political system after the collapse of the monarchy in 1918. The new constitution adopted in 1920 recognized this fact by the inclusion of sections giving the unions absolute power to represent the wage earners. In the light of this technical superiority of the labor groups, their collapse and the rise of National Socialism to destroy them offer a series of important problems. The following pages will trace the more important steps in the rise and fall of the German movement.

THE EARLY YEARS

In the 1830's and 1840's a few groups of wage earners defied the law prohibiting associations and formed organizations which bridged the period between journeymen's organizations and the modern trade-union. During the revolutionary period of 1848 some of these groups played important roles. Following 1848, large numbers of workers poured into the unions to work for better wages, hours, and conditions of employment. Most of these movements were local in character. Some of them, for example, the Labour Brotherhood in Berlin, were primarily political, although they also had trade-union aims. The reaction following 1848 brought repressive legal measures to put an end to these efforts at organization.

The next significant period came in the 1860's through the interest of certain middle-class elements in politics and the position of the workmen. One of their activities was to organize educational associations among wage-earning groups. These failed to satisfy the workers and many began to talk of organizing a labor congress.

Conflicting theories. Two strains of opinion were contending for pre-eminence, the Lassallean and the Marxist. A committee set up for the purpose of planning a congress was addressed through an *Open Letter* by Ferdinand Lassalle in 1863. Lassalle outlined his proposal for labor organization in this

¹ See R. Seidel, *The Trade Union Movement of Germany*. International Federation of Trade Unions. Amsterdam. 1928. P. 29.

fashion: "The laboring class must constitute itself as an undivided political party, and make the general, equal, and direct suffrage the main issue. Only through representation in the legislative bodies of Germany will the laboring classes be able to satisfy the legitimate interest in politics. Labor must begin henceforth a peaceful and lawful agitation for the suffrage, with all the means available within the existing law."

Lassalle had no confidence in savings banks or in the invalidity and health insurance offered by the liberal elements. Co-operatives of the ordinary sort and trade-unions were useless. Each of these was doomed to failure because of the operation of "the iron law of wages." The only way out for the working class "lies through that domain in which they still rank as human beings, the State." In possession of political power, the working class can abolish the iron law of wages by setting up co-operatives of producers, voting necessary capital from the sources of state credit. According to this theory, the first essential was political power through suffrage.

The Marxist group, under the leadership of Liebknecht and Bebel, held to the necessity of a world-wide economic organization of the workers which would ultimately overthrow the capitalist system by revolutionary action. The trade-union was the agency for the education of the workers for the eventual seizure of economic and political control. According to one observer, between these two theories "there began a struggle for the soul of the German working men's associations."

Added to these opposite views was the less important one of Hirsch, who sought a following in the workers' educational associations. Failing any significant success in aligning the workers with the Progressive party, he withdrew his followers and organized another movement, liberal in trend. The unions of this group came to be known as Hirsch-Duncker unions. They, with the Christian trade-unions, organized among Catholic workers who were numerous in certain geographical locations and trades, maintained an identity separate from and in the case of the latter antagonistic to the socialist unions.

The two major groups, Marxist and Lassallean, came together in 1868 and by 1875 had accepted a common program, the Gotha program, and formed the Social Democratic party. Similar unification took place among the unions, although many of them continued to have a strong Lassallean flavor.

Early in their history the unions began to lay the foundations for a powerful national movement. By combining into national units, with wide powers exercised by the national officers over "leadership of wage movements" and strike regulations, a high degree of centralized power could be marshaled to meet the growing organizations of employers.

The antisocialist laws passed by Bismarck in 1878 resulted in the dis-

ruption of both the Social Democratic party and the unions. Aimed specifically at political organizations, the laws were used to prosecute the unions. Many of them dissolved of their own accord; others transformed themselves into benefit societies. The repeal of the laws in 1890 after the fall of Bismarck opened the way for the expansion period of both the Social Democratic party and the unions.

THE ROAD TO POWER

By 1890 there were important issues to be decided. The dominant philosophy in the Social Democratic party at the time was Marxist,² and the surviving unions were dominated by that party. This raised the question of the relation between the political and economic wings of the labor movement, if the unions were to build their organizations on a national scale. Changes in the industrial structure, with the further growth of employers' associations and the concentration of the industrial population, brought up the question of industrial unionism.

Political party and unions. On the first problem of the relation of party and unions, the unions in 1892 indicated their intention of going their own way, an act which the party considered unfriendly. Friction continued to occur, especially over the reprisals of employers when unionists struck in response to orders from the political party.³ The unions felt that they should be consulted when strikes of a political nature were contemplated. After the Russian events of 1905, there was more discussion of the nature of the political strike. The unions advised a cautious policy, fearing more drastic action by the political group. Finally in 1906, the famous Mannheim agreement was made declaring in favor of general political strikes but adding that the unions would be permitted to decide on action for their members independently of the political party. If there were trade-union victims after political strikes, the cost of relief should be borne jointly by party and unions.

The problem of industrial unionism precipitated a different type of difficulty. Employer's organizations were developing more militant tactics, strike insurance funds, yellow, or company, unions and elaborate welfare work. Later in the decade, the government initiated another antiunion campaign, and passed laws making picketing almost impossible. The need for strengthening the trade-unions was apparent.

Internally the unions adjusted rather painlessly. A movement for amalga-

² See the Erfurt program of 1891 for the complete statement of philosophy and program.

³ The Social Democratic party, in contrast to the British Labour party, was a party of individuals, not a federation. For an account of results of this difference, see Egon Wertheimer, *A Portrait of the Labour Party*. G. P. Putnam's Sons. New York. 1930. Chap. I.

mation set in which tended to even greater centralization of control than had existed previously. District and interlocking trade councils were established and a national committee was set up to undertake organization of especially difficult groups. By 1904 the unions had 1,000,000 members. Under the leadership of Karl Legien they developed the technique of collective agreements covering wide sections of industry and geographical territory.

The Social Democratic party had adopted meanwhile a revisionist policy and turned its attention more and more to election of members to the Reichstag and to effecting social reforms, thus releasing the unions from the fear of extreme action on the part of the party. The social insurance measures sponsored earlier by Bismarck were extended, partly through pressure from the Social Democratic politicians.

WAR AND REVOLUTION

Both the Social Democratic party and the unions supported the War, although there had been endless debates on the possibility of stopping a potential war by general strikes and by action with the international labor movement.

The effect of the War on unions was drastic. There was loss in membership through mobilization; treasuries were depleted; however, as in other belligerent countries, the unions gained a new status. Joint boards of employers and unions were set up, agreements were made to hold to a sort of industrial truce. Few strikes occurred, and when they did the unions helped clear up the difficulties.

In 1917 a split between the moderate and left-wing elements in the Social Democratic party resulted in the formation of the Independent Social Democratic party. The latter called a general strike in 1918 to force the Social Democrats to form a "true socialist state" and not a republic. The strike was a failure and the Social Democrats put down its leaders by force of arms. Naturally, these political issues were reflected in the unions. On the whole, however, the weight of union sentiment was on the side of moderation.

LABOR AND THE NEW CONSTITUTION⁴

When the Republic was proclaimed in 1918, the Social Democratic party assumed the functions of governing. Under the circumstances the unions were in a position to play an important part in the construction of the new system and were successful in having much of their creed incorporated in

⁴ For detailed account see Nathan Reich, *Labour Relations in Republican Germany*. Oxford University Press. London. 1938.

the new constitution. The "November Agreement" (1918) setting up plans for working alliances between employers and unions opened with this statement: "The trade unions shall be recognized as the official representatives of the working class." No branch of government had power to dissolve the unions. They were free bodies beyond the reach of cabinet, legislature, or police. Legislation to effect these results was enacted. There were to be no yellow-dog contracts; and employers were to withdraw their recognition from the yellow, or company, unions. The unions were to be called on to perform certain economic functions. Working conditions were to be laid down in collective agreements between employers and unions, with the government arbitrating in exceptionally difficult situations. All plants having more than fifty workers were to have "works councils" elected by the local group.

The theory on which these plans rested was that of parity ⁵ between employers and workers, with the state a neutral agency, intervening only where the parties could not settle their own disputes. The system was designed to protect workers from exploitation and also to permit them to exert a wide sphere of influence in the factory, in the labor market, and in affairs of state, through economic councils and the administration of social insurance.

YEARS OF TENSION

The system ran into a series of difficulties. The working agreements did not meet with entire approval of the workers, some of whom favored making the works councils the unit. Later, in 1924, the unions officially withdrew from the agreements.

Reactionary elements attempted to prevent the new constitution from going into effect in 1920. The unions, in co-operation with the Social Democratic party, called a general strike to prevent sabotage of the system.

Internal struggles between Social Democratic and Communist elements affected both political and trade-union groups. Finally, in 1924, the Communists were expelled from the Social Democratic unions. The conflict between the two groups continued unabated up to the victory of the National Socialists in 1933, who, as early as 1923, began to organize Nazi cells in the trade-unions.

Economic conditions were at first almost insurmountable. Four years of war had left the country very near a state of collapse. In the middle 1920's, by a series of adjustments of war debts and internal finance, conditions improved, but only temporarily.

The political situation inherited by the Social Democrats was one fraught

⁵ Franz Neumann, *European Trade Unionism and Politics*. League for Industrial Democracy. New York. 1936. Pp. 20-25.

with difficulties also. Negotiation of the peace treaty, with its severe conditions, was forced upon the representatives of the party, who had no alternatives but were later held in contempt for their poor bargaining.

NATIONAL SOCIALISM AND THE COLLAPSE OF THE LABOR MOVEMENT

Caught in internal economic and political conflict and in a world depression, the German labor movement was faced with all the acute problems of a declining economy. Pressure from one side called for complete socialization of the system, either through the extension of democracy or by the extreme methods of dictatorship. The employing class feared both of these alternatives, and gave aid to the National Socialists after the latter had given some evidence of strength. Increasing unemployment had weakened the unions, most of whose leaders were engrossed with day-to-day affairs and were so fearful of losing some of their immediate hopes that they lost sight of the ultimate goal of their earlier socialism.

The middle class had suffered greatly during the inflation period; those owning property were oppressed with high taxes; uncertainties and fears of the future caused them in large numbers to give allegiance to the National Socialist cause, which promised relief.

Although the Social Democrats (who did not have a controlling majority) were technical Marxists and were learned in the doctrine, they had no plan for the assumption of power and no program for organizing a socialist state since the highly theoretical Erfurt program of 1891. The leaders had long been committed to democracy and to a policy of gradualness. The Communists, on the other hand, were convinced that the next step was revolutionary dictatorship to which the Social Democrats must be pushed by every means available or have power snatched from them.

With the assistance of increasing unemployment, falling trade, a bruised national spirit following the War, a disaffected middle class, a working class divided among themselves, and a fearful and co-operating employing class, the National Socialists under Hitler swung into power.

Since the concept of the totalitarian state, or party, which the state serves, cannot tolerate any autonomous or independent bodies within the system, the unions and labor political parties were doomed when Hitler became Chancellor in January, 1933. The political parties were dismembered almost at once. The trade-unions attempted to bargain to retain at least a shadow of their former activities. They offered to give up their international affiliations and to separate themselves completely from political activities. In spite of these efforts, on May 2, 1933, storm troopers took over the offices of the socialist trade-unions, arrested most of their leaders, and confiscated union property. The National Socialist factory cells appointed "commissioners" to

carry on the work of the trade-union leaders, leaving the union structure intact. This type of "conquest" was not successful, since few, if any, of the commissioners knew anything about trade-union administration.⁶ This period was short-lived and was followed by a policy of complete emasculation of the unions. With this attack on the strongest of the trade-unions federations, the two smaller federations (Catholic and Democratic) submitted voluntarily and were absorbed along with the conquered unions.

The Labor Front. A new labor organization, the German Labor Front, was formed as the recognized combination of the collapsed federations. But within the Labor Front there arose opposition from unionists who had behind them a long experience of freedom within the union group. By decree all Social Democratic, Communist, or pacifist members of works councils were therefore removed and the police appointed new councils. Finally, the Nazi party, in accordance with the principle of totalitarianism, dissolved all employers' and workers' associations and expanded the Labor Front to include all classes—workers, middle class, and employers⁷—making a complete end to the political and trade-union organizations which had made the German movement the object lesson in achievement to most of the rest of the trade-union world.

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⁶ See Neumann, *op. cit.*, pp. 44-45.

⁷ An analysis of the position of labor in Nazi Germany is beyond the scope of this material. Those interested in how the labor system operates should consult R. A. Brady, *The Spirit and Structure of German Fascism*. The Viking Press. New York. 1937. Chap. IV.

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QUESTIONS

1. What is the explanation of the fact that the political party developed in the German labor movement before the trade-unions, while in Great Britain the opposite was the case?
2. How do you explain the integration of the trade-unions in pre-Hitler Germany?
3. To what extent, if at all, was the split between socialist, religious, and liberal unions in Germany a weakening factor?
4. Describe what is meant by the elaborate development of union institutions in Germany. How could these be wiped out so completely?
5. How important a factor was unemployment in the inability of the unions to hold out?
6. Did the fact that German unionists, in contrast with the British, were nurtured on a well-knit set of socialist theories exert any influence? What of the different structures of the parties?
7. It has been said that the Social Democratic party failed not in 1933, but in 1917. What is the significance of that statement?
8. What brought about conflict between the Social Democratic party and the unions? Is it true, as some people believe, that in their very nature, trade-unions exert a conservative influence?
9. Explain the position of labor under the Weimar Constitution? Why were the unions finally skeptical of the working agreements?
10. Why do you think the German labor movement was eclipsed by National Socialism? What is there about the labor institutions which make them incompatible with the concept of totalitarianism?
11. Does strength on the part of labor automatically invoke a reaction which in times of acute stress will destroy labor organizations?

FROM
SYNDICALISM
TO REFORM
39 . . . IN FRANCE

THE French labor movement has been organized in the trade-union sense only since 1884, when significant changes were made in the law to permit combinations of workmen. In the period before this, some scattered efforts at trade-union organization were made from time to time, but the existing activity among workers tended to follow a political rather than a trade-union pattern.

Certain special conditions in the French scene, having to do with the development of capitalism within the country and with the political history of the early labor organizations, created a labor movement between 1895 and 1920 which was committed to the doctrines of revolutionary syndicalism. Outside the Mediterranean countries, revolutionary syndicalism had only a small following and exerted only an incidental effect on the labor movements in general. In France the bulk of organized workmen adhered to the doctrines of syndicalism and the *Confédération Générale du Travail*, the national federation of labor groups, was committed to them. The War, the revolution in Russia, and conditions sharpened by an unsuccessful general strike in 1920 served to discredit the syndicalist position, and officially the French labor movement began to turn away and seek a program of reform on the pattern of British unionism, or to turn to political communism under the Russian influence.

The following section will trace the rise and decline of the dominant interest in syndicalism among French labor organizations.

GENERAL CONDITIONS

Capitalism did not develop so quickly or so vigorously in France as in Great Britain and Germany. French industry was and still is to a great extent in the hands of a large number of small industrial employers. Wealth is more evenly distributed, and the weight of influence of the petite bourgeoisie is great. In many sections the dominance of agriculture means little labor activity, since agricultural workers are difficult to organize.

Also, many important enterprises have been brought under the control of the government—forests, toll bridges, match and pottery making, railways, utilities and others. In these enterprises the problem is that of organizing employees of government industries. Only after legal restrictions were lifted was it possible to make progress in that area.

In general, a low standard of education has existed among the wage-earning and lower middle classes. Wages of French workmen were always low in comparison with those of Great Britain and Germany. Collection of high or even regular union dues and the development of co-operative or trade-union benefit schemes were more difficult under those circumstances.

EARLY ORGANIZATIONS

In spite of rigid legal restrictions adopted in the *Le Chapelier* law in 1791 and made more stringent in subsequent legislation,¹ conditions among workmen drove them, as in other countries, to disregard the law and combine for self-protection. The societies of workmen springing up, especially among skilled artisans, were secret and until the 1830's were almost exclusively protective in nature, with little evidence of any well-defined social or economic philosophy.² After 1830, interest in socialism introduced the idea of substituting a co-operative system for one dominated by private property. At first this took the form of developing co-operative savings and credit institutions through the trade societies, but the failure of one of the large credit co-operatives brought the whole movement into disrepute. Then the organized workers turned more to the theories of world-wide socialism as promulgated by the First International.

One of the first organized demands was for a change in the law regarding the right of combination. Until 1864 efforts in this direction accomplished little. In that year the technical right to combine and strike was granted, but

¹ Laws passed in 1803 and 1810 incorporated in the Penal Code made strikes by workmen and any sort of collective actions criminal. Heavy fines and imprisonment were the penalties for breaking the law. In 1834 any association with more than twenty members, or smaller if it were a part of a larger group, was declared illegal.

² See Louis Levine, *Syndicalism in France*. Columbia University Press. New York. 1914. Chap. I.

the right amounted to little without freedom of assembly. By 1884 the laws were relaxed sufficiently so that coalitions could be formed and ordinary collective activities could be carried on without danger of legal prosecution.

CONFLICTS WITH THE SOCIALISTS

The French section of the socialist movement was largely composed at first of the followers of Proudhon, who advocated a system of "mutualism," a method by which workingmen were to free themselves through the peaceful means of education and mutual insurance. A small number of the followers of Blanqui emphasized the forceful seizure of political power. All labor organizations were swept away by the events following the Paris Commune of 1871, but an interest was continued in the general theories of socialism which were advocated a few years later after the formation of the French Labor Congress in 1876. Organized on a conservative, safe and sane program of collective bargaining with the minimum of strife and strikes, the Congress changed its temper in 1879 and adopted the name of the Socialist Labor Congress.

Unfortunately, the socialists were greatly divided among themselves. Conflicts arose between the parliamentary socialists and the anarchist groups, the latter doctrine having made a deep impression on a number of French workmen. The "orthodox" Marxist group split with the moderate elements. Then the moderates split into two factions. The Blanquists who had fought in 1871, had fled, later returning to France in 1880, where they continued some of the traditions of their leader. At that time they abandoned their secret practices and attempted to build up political power. A minor group of Independent Socialists was advocating a program of social reform legislation and the gradual nationalization of essential services.

The unions, or *syndicats*, of the workingmen were the battlegrounds for these doctrinal disputes, as each group wished to control the mass organizations. Although the effect was to increase interest in the *syndicats*, since the political groups usually made it mandatory on their members to join or to work with them, the long-run effort was disastrous. Political dissension tore down the *syndicats* at a time when economic developments made a united movement more and more necessary.

By degrees the *syndicats* became disgusted and disillusioned by politics and politicians. The *Confédération Générale du Travail* (C.G.T.), organized in 1895, disavowed both. The *Bourse du Travail*, or labor exchanges, with certain service features organized on a national scale likewise held to political neutrality. The two organizations came together in 1906 as a united organization.

In the meantime, the philosophy of revolutionary syndicalism³ began to be developed. Its central technique was the general strike which would be the means of taking over the economic system by direct action. It repudiated collective bargaining, class collaboration, and all political action. So strongly did the syndicalists distrust the government that they opposed such mild reforms as state old-age pensions. In the Charter of Amiens, adopted in 1906, complete commitment was made to the syndicalist philosophy.

Under the influence of this type of theory, the French *syndicats* advocated, and often practiced, widespread, almost spontaneous strikes. They were violently antimilitaristic and highly antipatriotic, the latter sentiment being intensified by the harsh action of the government in time of strikes. At a time when British and German unions were enjoying the fruits of their benefit schemes, their class collaboration in collective agreements with employers, and the beginnings of social insurance through the state, the French groups were declaring in word and in deed that such things were of no consequence, and that the general strike was the potent weapon for asserting labor power.

THE WAR PERIOD

The World War shattered the antipolitical and antipatriotic ideas. Although there was a minority in opposition, the labor movement supported the War. The leaders were not arrested as had been feared but were permitted to serve the government in official capacities. Membership in the *syndicats* increased rapidly. Regular trade-union procedures were introduced first in the war industries and later throughout the movement. By the end of the War, the French movement was functioning in a manner not unlike those of the other nations.

POSTWAR

In the years just following the War, the French movement underwent a reversion to its former revolutionary philosophy. In common with most of the rest of the world, it believed that the end of an epoch had come and that the time had arrived for labor to assert its power. An upsurge of syndicalism came to a climax in a general strike in 1920 which was a failure. The government brought action against the C.G.T. and ordered its dissolution. The order was not enforced, but the C.G.T. made some change in its form of organization as a result.

In the years following, the C.G.T. was torn by internal disputes. Part of the dissension was over the struggle to locate responsibility for the failure of the general strike. Part was an internecine conflict between the philoso-

³ See John A. Estey, *Revolutionary Syndicalism*. P. S. King & Son. London. 1913. Chap. I.

phies of radicals and reform elements.⁴ The left-wing groups were divided among themselves. One favored the return to the doctrines of revolutionary syndicalism as accepted before the War, breaking all connections with "collectivist" international groups. Political activity would be eliminated, and the *syndicats* left free to develop their techniques to culminate in a general strike for the control of the economic system. Another faction advocated a direct alliance with the Third International of the Communist party, while a third desired an approach to the Moscow International which would guarantee autonomy to the French organization.

The moderate elements favored membership in the Amsterdam, or Socialist, International, and a general program of reform of a Social-Democratic sort. They accused the left groups of deserting the Charter of Amiens and subordinating the trade-unions to the dictatorship of the Communist party.

After an acrimonious fight for control of the C.G.T., the federation was finally dominated by the reform elements. The radicals organized their own national federation, the General Confederation of United Labor (C.G.T.U.), which was within a short time completely under the control of the communist elements, the syndicalists having withdrawn in protest against what they termed "the final and complete subjection of the unions to communist politics."

Although the *syndicats* were not constitutionally controlled by the Communist party, through the C.G.T.U. the communists exerted more influence among organized workmen than in any other country except Russia. By degrees this bloc discarded the syndicalist concepts implied by its formal acceptance of the Charter of Amiens and substituted the idea of civil war for the general strike. The C.G.T.U. was at first hostile to labor legislation and methods of reform, but later changed and manifested some interest in those measures.

In the postwar decade the Catholic unions which had existed previously exerted a more significant influence in organizing workers of that faith. In general, they opposed anticapitalist theories, strikes, and violence; they favored peaceful means of dealing with employers and adopted a mild program of social reform. The absolute syndicalist group shrank to an insignificant minority. It has been pointed out, however, that something of the former syndicalist spirit was evident at the time the Popular Front government went into office. The French unionists, having been promised certain concessions from the politicians, did not wait for fulfillment of the promises, but struck spontaneously to force immediate action by the Blum government.

⁴ M. R. Clark, *History of the French Labor Movement—1910-1928*. University of California Publications in Economics. Berkeley. 1930. Vol. VIII, Chap. VI.

THE POPULAR FRONT

The success of the National Socialist dictatorship in Germany created a profound effect in France, especially among the labor organizations. Even before this period, certain groups in the labor movement were experimenting with united action on specific matters. Prior to the adoption of a co-operative policy by the Communist International, the French workers in both socialist and communist organizations were seeking these common methods of action. This was followed later by the dissolution of the C.G.T.U. as a separate organization.

Although the labor organizations were never strong outside the larger centers, they were an articulate group which aroused opposition from employers and from middle-class interests. A threatening move in the direction of fascism appeared at a time when internal affairs were at a critical point. The co-operation of all labor political factions supported a Popular Front government, presumably to protect the democratic institutions of the country and to work out some means for stabilizing the problems of the domestic economy.

The career of the Popular Front was mixed with successes and failures. It effected a reform program for wage earners and gave a temporary stability to the economic situation. It also took drastic action to outlaw the fascist movement. Its use of force against strikers brought it into disrepute with some elements who considered the act an indication of too great an influence from the right. Although the communists co-operated in the election campaign, the party did not assume any offices, thus, according to their theory, keeping themselves in readiness to stem a possible tide of reaction with the Popular Front.

The strain within and the international issues precipitated by the civil war in Spain combined to bring the Blum Cabinet to a crisis. The government adopted and defended to the end its policy of nonintervention, in spite of spirited opposition from a considerable section of the labor movement. After being forced out by the cumulation of events, primarily having to do with fiscal policies, the Blum Cabinet was followed by one nominally a product of the Popular Front, but in reality not. The result has been such as to bring the labor groups to a temporary halt, with communist and socialist elements engaging in vigorous attacks on each other. The outbreak of war in 1939, accompanied by controversy over the German-Soviet pact, has produced a more serious situation in which the communist party has been suppressed by the government.

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QUESTIONS

1. What are the features distinguishing the French labor movement from the British and German?
2. What are the basic tenets of revolutionary syndicalism? Is there any evidence to the effect that adherence to those principles in France was a rationalization?
3. Describe the efforts of the unions to attain freedom under the law. Is this a different experience from that of the other movements?
4. To what extent did the behavior of labor politicians affect the rise of syndicalism?
5. How do you explain the strong antipatriotic tinge of French labor organizations in the prewar period?
6. Is there any particular reason why the C.G.T.U. had more success in the trade-union field than communists experienced in the other countries?
7. Why did French labor turn so quickly, and to some extent painlessly, from syndicalism to reformism?
8. Is it significant that the French unions resorted to widespread strikes as soon as the Popular Front government under Blum was organized?
9. A Scandinavian labor leader has stated that the reason the Popular Front government failed was that French industry was in such severe need of reorganization in the direction of efficiency. What did he mean? Do you agree? What difference would it make if industry were rationalized?
10. What are the strong and weak points in the armor of French labor in the face of rising fascism?

TRADE-UNIONS in Soviet Russia bear a different relationship to industry, to the government, and to the worker from that of the unions in the other industrial nations. They function in a planned system of state-owned and controlled industry, a state controlled by a dictatorship of the Communist party. Since the revolution of 1917, a trade-union movement with a large membership has been developed. The essential functions of the unions have undergone changes of a significant nature, and with the changes have come sharp controversies over their wisdom and meaning.

In the outside world, interest has centered mainly on two aspects of trade-union evolution: first, the general structure and functioning of the labor organizations; second, the problem of the practical validity of the theoretical position of strength held by the unions, since the ultimate control of their policies and actions rests with the same group which controls the state machinery.

BACKGROUND

The postrevolutionary developments among organized Soviet workers must be examined against the background of their origins. The unions and political organizations of workers which began in the late nineteenth century existed under the most complete conditions of illegality and constant persecutions from police and other government officials. The harshness of gov-

ernment opposition to labor organization inevitably turned the most active efforts into political channels. With the exception of a few industries, most of them financed by foreign capital, Russian economy at the time of the Revolution of 1917 was medieval. Workers in the factory industries had no previous experience in organization as an artisan group.

In spite of adverse conditions, various efforts at organization were undertaken from time to time.¹ Many of them were spontaneous rebellions which were stamped out by violent governmental measures. None resulted in anything resembling the institution of modern trade-unionism. Since their fate depended more on the attitude of government than of employers, the organizations tended to be antigovernment before they were anticapitalist. Secret groups of professional revolutionaries rather than trade-union officials assumed leadership of these undeveloped workers' movements.

During the revolutionary period of 1905 a few already existing unions and a number that were organized spontaneously took on important roles as spokesmen for the wage-earning class. All-Russian Trade Union Conferences were held in 1906 and 1907. In the latter year the Russian unions sent delegates to the meeting of the International Labor and Socialist Conference held in Stuttgart.

In 1908 the reactionary attitude of the government resulted in the dissolution of the unions by formal edict. Some of them continued as part of the underground movement, but in the very nature of their illegal existence, they could perform no function other than being a center for revolutionary propaganda. In 1917 some of these groups formed the nucleus of the expanding trade-union activity after the fall of the monarchy.

REVOLUTION OF 1917

After the February revolution in 1917, unionism spread rapidly. Within a few months, membership reached the million and a half mark and was continuing to increase. These groups, composed largely of politically uneducated masses of workmen, were the centers of conflict between the warring political factions of Mensheviks and Bolsheviks who were competing to control the unions, factory committees and workers' and soldiers' deputies. Since, according to Bolshevik theory,² the trade-union is an essential revolutionary institution, strenuous efforts were made to win them over to support the left position.

After the Bolshevik success in the October revolution, the problem of the position and function of the unions was raised anew. In one form or another the issue has continued to be a hotly contested point. The contro-

¹ See Peter Turin, *From Peter the Great to Lenin*. P. S. King & Son. 1935.

² For an application of this idea see F. Neumann, *op. cit.*, pp. 51-53.

versy outlined below reflects the changes in official policy and also demonstrates the changing role of the unions.

THE EXTENT OF UNIONISM

According to the last complete figures available (1936) membership in Soviet trade-unions was 21,614,700, or about 83 per cent of those eligible for membership. The extent of organization varies from industry to industry. In the less-developed industrial areas, the proportion of members tends to be low, as it is in agricultural enterprises. In highly developed factory centers the percentage runs as high as 94 per cent. These percentages indicate that membership is not compulsory, but since social insurance and other benefits are administered by the unions, it is inconvenient and often disadvantageous not to be covered by union membership.

UNION STRUCTURE

Structurally, the Soviet trade-unions are neither craft nor industrial in the strict definition of those types. All those employed in one establishment are brought into one comprehensive organization. A series of these in one region will form a section of a national union. The national unions are brought together in the All-Union Congress of Trade Unions.

Originally there were only a few national unions, the tendency being to effect as complete consolidation as possible. Later reorganizations have increased the number and have stressed the necessity of delimiting the coverage of a particular union to prevent unwieldy size. Another tendency in reorganization³ is the geographical decentralization of the unions, moving the headquarters of certain unions to the section of the country where the industry is more heavily concentrated.

PROBLEM OF FUNCTION

There are four major theories⁴ of the proper function of unions which have been advocated at one time or another since 1917. In the early period, a minority group favored a type of syndicalist organization of the new system. In the structure proposed, the union was to be the basic unit for the organization of production and the control of the system as a whole, taking over all the functions of ownership and management.

Another group advocated the complete subjugation of the unions to the

³ N. M. Shvernik, *Reorganization of the Work of the Trade Unions*. Cooperative Publishing Society. Moscow. 1935.

⁴ Sidney and Beatrice Webb, *Soviet Communism*. Longmans, Green & Co. New York. 1936. Pp. 166-72.

demands of the state, making them semimilitarized organizations. The conflict between this and the syndicalist position was cut short by the precipitation of the civil war, which automatically pressed the unions into service to defend the state, making them *de facto* organs of the state. The unions threw themselves into the struggle and became recruiting centers for the government's fighting forces. The government, in turn, supported the unions morally and financially.

At the close of the civil war and the period of war communism, factions in the Bolshevik party demanded the legal absorption of the trade-unions by the state, organizing the workers through the unions into a sort of labor army. The introduction of the New Economic Policy introduced new difficulties. The re-establishment of private trading and entrepreneurship in certain economic areas called for a protective fighting brand of unionism. It was decreed, therefore, that the unions should exist separately from the state, as independent organizations, "to safeguard the class interests of the proletariat in its struggle with capitalism."⁵

This new position left the question of the relation of the unions to the state as employers in an ambiguous light. During the N.E.P. period the unions tended to assume an aggressive spirit in seeking their own interests. This attitude was not dropped easily when the N.E.P. policy was reversed and the government or co-operative agencies became the employer. The problem was: Should the trade-union be developed as a protective agency for the workers against the state as employer? If so, then the unions should remain quite separate from the state and should be called on to take on no responsibilities for production. Tomskey, President of the All-Union Congress of Trade Unions, advocated this point of view and stated that functionally the trade-union in a socialist state should differ little from that in a capitalist system.

Against this was placed the opinion that the whole future of the Soviet system depended on a general increase in industrial production, a process in which the co-operation of the trade-union was a primary necessity. Assuming responsibilities for production, as well as viewing an individual problem of wages from the angle of the system as a whole, the unions must bear a close relationship to the organs of the state. Therefore, in 1929 Tomskey was replaced as head of the trade-unions, and a vigorous campaign undertaken to revamp the policies of the unions.

As a result of this decision, the tendency has been to take political power away from the unions and vest it in political agencies of the state. The role of the unions is thus primarily a protective one, although they may exert an influence on the general policies of wage setting since they help set piece

⁵ See summary of Report of Commission summarized in Robert W. Dunn, *Soviet Trade Unions*. International Publishers. New York. 1928. Pp. 26-27.

rates and adjust other details through collective agreements with employing units.

Protection by the unions is exercised by their control and administration of social insurance funds. In 1933 the Commissariat of Labor was abolished and its work placed under the jurisdiction of the unions. Also, those sections of the Labor Code (set up by general legislation) dealing with such matters as hours, hiring and firing, and safety and sanitary conditions are administered by the unions. This involves a function akin to that of the factory inspector. Cultural and educational opportunities are also offered through the medium of the trade-union.

Strikes and other methods of coercion used by unions in capitalist countries are not practiced. Protagonists of the Soviet system maintain that since the employer is a collective proletarian state, strikes against the employer would be analogous to a worker striking against himself.

The more important and generalized issue is whether or not the unions under the system are sufficiently free to enjoy genuine opportunities for collective bargaining, or whether they are simply organs through which the government effects its program of protection of a social welfare type. On this there is sharp disagreement,⁶ some maintaining that the Soviet trade-unions are the most remarkable and powerful labor organizations in the world; others say that they differ little from the labor organizations in the fascist countries. While it is undoubtedly true that the unions are no longer political agencies of importance and that their ability to use coercive measures practiced in the capitalist countries is curtailed, there is considerable evidence that the Soviet trade-unions constitute a vital protective device to Soviet workers outside the "benefit" area. The dictatorship in Russia has completely abolished a free market, as the fascist dictatorships have not altogether accomplished. Therefore the central feature of trade-union functioning must of necessity be examined in the light of the fact that industrial progress must be reflected in improvements of the workers' well-being. The union is undoubtedly an agency for adjusting the working life with that end in view.

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⁶ See, for example, the opposite opinions expressed by the Webbs, *Soviet Communism*, pp. 183-93, 217-19; and Neumann, *op. cit.*, Chap. V.

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QUESTIONS

1. At what points did the peculiar characteristics of the economy of old Russia give a special bent to the cause of labor organizations?
2. What were the obvious limitations to the effectiveness of trade-unionism?
3. Did the peasant revolts bear any resemblances to modern trade-union or political upheavals?
4. What was police "socialism"? Was it a training ground for future labor activities?
5. Describe the role of the unions during the revolutionary period in 1917. At what point and for what reasons did they act as brakes on the extremists?
6. What have been the stages in the development of trade-union function? In relation to production? In relation to the state?
7. When the state is employer, are workers, and therefore unions, no longer faced with the ordinary problems of employer-employee relations?
8. Do you attach any particular significance to the fact that the trade-union organizations have absorbed the functions of administering social insurance done formerly by the Commissariat of Labor?
9. Can there be a real process of collective bargaining when the employer is the state? When the state is a dictatorship? When a strike is illegal?
10. Neumann states that there can be no such thing as collective bargaining under the Soviet system. The Webbs and Professor Laski do not agree with him. What are the arguments on both sides?

THE INTERNATIONAL RELATIONS OF 41 LABOR

THE same circumstances which created an economic system with world-wide connections developed within the national organizations of labor a sense of common interest with other labor groups beyond their national boundaries.¹ Development of modern methods of communication and transportation resulted in the establishment of international economic and commercial relations. Competition in trade therefore became more than a problem within one narrow national market. Instruments for protecting the standards of labor had of necessity to be considered with respect to their functions in a wider area. Migrations of peoples from one country to another and from one part of the world to another increased international contacts among groups of workers. Also, with increasing expansion of industrialism the need to act in the interest of maintaining peaceful relations among nations was recognized by labor as well as by humanitarian groups.

The earlier expressions of common international interests were informal and transitory. The Owenites and Chartists in Great Britain, for example, were aware of and stated their unity of interest with workers on the Continent. Even earlier than this, corresponding societies were encouraged as a means of somewhat regular and informative source of communication between British and European workers, especially those in France. Marx and Engels in their writings emphasized in the 1840's the belief that the development of capitalism brought uniformity in conditions of labor every-

¹ The most comprehensive work on this subject is Lewis Lorwin, *Labor and Internationalism* The Macmillan Company. New York. 1929.

where, that the effect was to "denationalize" workers, so that their struggle must be international in character, although it must start with national movements. A handful of individuals, mostly refugees from political oppression in their homelands, attempted to spread this doctrine.

These relations, however, were dependent mostly on the interest and perseverance of individuals. Their content was a mixture of recognition of basic economic interests and practical expedients for protecting them with a generous dose of sentiment concerning the role of labor in promoting peace and economic justice in the world, an opinion later translated into the socialist ideal of the solidarity of the working class against the capitalist.

It was inevitable, therefore, that the labor groups should formalize these casual contacts and general body of ideas of internationalism by the organization of special institutions to carry them forward. The activities of organized labor in this field extend from co-operation with various liberal and humanitarian groups for the promotion of world peace to the support of specific political and economic sections committed to an uncompromising battle for the "revolutionary emancipation of the enslaved working class."

THE FIRST INTERNATIONAL

The earliest of the regular international institutions of labor was the International Association of Working Men, organized in London in 1864, and made famous by the activity of its leader, Karl Marx. During the preceding decade a number of British trade-unions were impressed with the need of some type of international union organization. The origin of this interest was the influx of European workers into the London labor market, especially after the depression of 1857-58. Contacts with French workers who attended an international exhibition in London gave impetus to the movement. A conference was called in London, attended by a number of trade-unionists, as well as by refugee groups resident there. Having voted down the proposal of the Italian group that the organization become a secret, conspiratorial center, the proposals set forth by Marx in his "Inaugural Address" were adopted.

The chief problem was to state a program and policy acceptable to a variety of opinion among the delegates. British members were interested in trade-unions; the French were definitely not interested in unionism but in a co-operative reorganization of society; the Germans were under the influence of Lassalleian ideas for universal suffrage and producers' co-operation. The American labor movement expressed some interest but was too remote to be of much significance.

Marx dropped the sharp tone of some of his earlier writings and set forth a moderate platform stressing the evil influence of industrialism on

the lives of workers everywhere and the need for the closest of fraternal relations among workers of the various nations. International co-operation was to take the form of working for industrial protection and to influence and counteract the policies of governments.

A permanent organization under the guidance of a "General Council" was set up. In the succeeding years international gatherings were called and correspondence was maintained between the Council and the national groups. In 1867 money was collected for striking bronze workers in Paris and for striking tailors in London.

Internal conflict. In spite of evidences of success and influence, the organization declined by reason of both external and internal conditions. In the last analysis there were irreconcilable groups within it. There was throughout constant conflict between the philosophy of the pure and simple trade-unionists and those with a radical political philosophy. The British leaders lost interest and after the Paris Commune (which the Continental press laid at the door of the International) withdrew. There was always a serious financial problem. Most of the time there was even insufficient money for postage. Moreover, during the next few decades, the expansion period of industrialism in the various countries dimmed for the majority of workers the sense of irreconcilable conflict implied in the Marxian leadership. There was finally the serious personal conflict between Marx and the anarchist, Bakunin, an antagonism based on diametrically opposed temperaments and methods of work. When in 1872 it appeared that the Bakunin forces would dominate the organization, the decision was made to transfer the headquarters from London to New York. After that the decline of the organization was rapid.²

Although the European press of the day pictured the International as a massive organization, with such large membership as to be a menace to the established order, later studies have indicated that its current influence was slight. Apart from its relation to Karl Marx, its place as a historical landmark is due to the fact that it pioneered in the field of international relations of labor. It formed a medium for discussion and gave publicity to labor conditions and to the international ideal. In the course of its history it raised most of the issues pertinent to the development of an economic and political philosophy of labor which have been matters of controversy ever since.

THE SECOND INTERNATIONAL

Although the decades following the collapse of the First International were marked by general expansion and economic progress, changes in the

² See above, Book II.

position of the labor organizations evoked another movement for international connections. Free-trade ideas were giving way to protectionism; the era of large industrial combination was displacing that of the small business concern; governments were undertaking new functions of regulating business enterprise. Socialist parties in most European countries had gained strength and influence. The trade-unions had grown also, and in certain instances the old leadership of "careful, restrained unionism" was under fire.

As a result of these quickening influences, another move was made to establish a permanent organization through which these groups might express themselves in the international field. The Second International was the answer for the political organizations; the trade-union internationals supplied the answer for the economic or industrial ones.

The Second International was formed in 1889 as a loose federation of socialist and labor parties. Since there was little centralization of power, each national body was free to go its own way. International meetings were held usually every three years, with an International Socialist Bureau transacting business between times. At the outbreak of the World War, the period of its greatest influence, there were twenty-seven national bodies affiliated.

The organization included all varieties of political socialists, from the Fabians of the British Labour party to the Bolsheviki of Russia. An early struggle with the intellectual descendants of Bakunin, who called themselves communist-anarchists, reached its climax in 1896 when it resulted in the expulsion of the latter, who retired to their own International, later reconstituted as the International Working Men's Association.

Even after this exclusion the Second International was beset by basically differing philosophies. There was a constant struggle between the "reform Socialist" groups, led by the German Social Democratic party and the "revolutionary opposition," led by Lenin and others. The two groups differed in their concepts of the relation of trade-unions to the socialist movement. On no question was there sharper controversy than over problems of war and peace. As the international political situation grew more tense in the years before the World War, naturally this issue overshadowed all others. There were international pacifists who would have no traffic with war under any circumstances. Another group opposed war but recognized the necessity of national defense under certain conditions, pointing out the duty of socialist and labor parties to do all in their power to bring war to an end. There was also a group opposing war in general but accepting it as an inevitable result of capitalism and believing that war could be used to "rouse the masses of the people from their slumbers, and to hasten the fall of capitalist domination." There was general agreement, however, that it was unthinkable for a socialist international to countenance war.

The outbreak of the World War proved to be the crucial test.³ A deep rift split the International, the majority of the affiliates finally going over to the support of their governments. A minority attempted to organize the anti-war socialists in a new bloc at the Zimmerwald Conference in 1915. A later meeting of remnants of the International to make plans for speedy end of the war was attempted at Stockholm in 1917 but was a dismal failure. The events following the Russian Revolution served to make the breach more complete and to pave the way for the Third International.

THE THIRD INTERNATIONAL

The success of the Russian Revolution threw the prewar differences of opinion into sharper form. The old conflict over dictatorship and means of achieving and holding power was no longer an academic discussion. The Bolsheviks issued an appeal to the socialist and labor world in general to support their revolution. The efforts to revive the Second International were viewed with alarm by the Bolsheviks, who believed it necessary to form a new international on the basis of their experience. Consequently a call to a conference was sent out from Moscow in 1919. The purpose was the organization of a new international body on communist lines.

The valiant efforts of the Russian revolutionaries in repelling the White armies had evoked sympathy for them in many quarters, but the alleged excesses of the dictatorship had created opposition. The socialist groups were split on these issues, some well-known figures, such as Karl Kautsky, who had championed Bolshevik ideas previously, attacking them with vigor.

To hold an international conference in Moscow in 1919 was no small undertaking. Many delegates could not obtain passports, and others who were able to travel were not accredited representatives of their groups. The conference claimed that "left-wing" delegates from thirty-four countries attended.⁴ It dissolved the Zimmerwald group which it assumed to supersede and set up a Manifesto for a new, the Third, International.

The new organization laid down a program of highly centralized action. The general aim was the immediate overthrow of capitalism and the establishment of "a universal dictatorship of the proletariat." At the second meeting in 1920 the famous twenty-one points of admission to the International were laid down. These points made conditions of membership exceedingly strict, for the leadership was of the opinion that world revolution was in reality at hand. The strictest discipline was demanded. There was to be no compromise with a complete communist program, evidently to come out of

³ See Lorwin, *op. cit.*, Chap. VI. For a more detailed account see Maurice Fainsod, *The Second International and the World War*. The Harvard University Press, Cambridge, 1937.

⁴ For listings see R. Palme Dutt, *The Two Internationals*. Labour Research Department. London. 1920. Pp. 25-26.

Moscow. Illegal work was required. Severe attacks were made on all reformist elements. Members were to oppose all socialist groups and the International Labor Organization.

Some of the national groups which had expressed interest in the new organization split on the question of the unconditional acceptance of such a program. In 1921 this disaffection resulted in the withdrawal of some of the previously interested groups, who formed the Vienna Union (The Two-and-a-Half International), for the purpose, they said, of laying the foundation for a future organization.

In a few years it became evident that the world was not on the threshold of revolution, and the Bolsheviki found internal affairs so absorbing that their interest was not so centered on a policy resting on immediate world revolution. From 1928 to 1935 there was no conference called by the International.

In the meantime the controversy over building socialism in one country took the center of the stage. Acting on this assumption, the Russian policy of revolutionary isolation broke down. Development of relations with the other nations of the world appeared to be expedient. Since the Russian party was the dominating influence in the International, this change of policy was reflected there. Also, the rising tide of fascism, especially the collapse of the labor movement in Germany, has caused a change in policy, expressed by Dimitroff ⁵ at the 1935 Conference when he called for a united front against fascism. Put to practical application, this policy resulted in a championing of the cause of democracy and reform programs, on the theory that the choice is not between socialism and capitalism but between democracy and fascism.

The evolution of this policy has caused bitter attacks against the Third International and the Russian Communist party on the grounds that it has forsaken the "cause of revolution and has betrayed the working class." A Fourth International, dominated by the ideas to which Trotsky has given the best-known expression, has been launched as a means of bringing "international labor back to the spirit of Marx and Lenin." The most recent development, following the new German-Soviet orientation, swings the Third International back to its former position of anticapitalist, anti-democracy philosophy.⁶

THE TRADE-UNION SECRETARIATS

Although the trade-union international organizations have been overshadowed by the wider influence of the internationals of socialist and labor

⁵ G. Dimitroff, *Working Class Unity—Bulwark against Fascism*. Workers Library Publishers. New York. 1935.

⁶ G. Dimitroff, *The War and the Working Class*. Workers Library Publishers. New York. 1939. This is a statement by the General Secretary of the International stating its position in the international scene.

parties, the trade-union affiliations have been of importance also. Reference has been made above to the temporary interest of the leaders of the British unions in the First International. In that relationship, however, they were not committing their union organizations as such to the international group.

The trade-unions' activity in international relations developed first around the "trade secretariats." These began to be organized in 1889 and 1890 at the same time as the Second International and in close relation to it. They were international associations of unions of the same craft or industry. The printers and miners were the first groups to form an international group. These were followed by other trades—wood workers, lithographers, and transport workers. By 1900 there were seventeen of them, with membership confined largely to a few of the European countries in which trade-unions had more rapid developments. In 1914 there was one in almost every industry although some of them were little more than paper organizations. Others were more active.

The chief function of the secretariats was to disseminate information about industrial and trade conditions to the members. Some of them kept the membership informed concerning strikes, with the purpose of preventing the migrations of workers to break strikes. Some collected financial aid for members on strike. A few provided interchange of union cards and assisted migrating workers in finding jobs in new countries.

THE INTERNATIONAL FEDERATION OF TRADE-UNIONS

The International Federation of Trade Union Centers, since 1913 the International Federation of Trade Unions, attempted to perform similar tasks but on a broader scale. It brought together the various national federations of labor, and made an effort to develop a feeling of international solidarity among them. It was less concerned in the early days with problems of specific groups than the trade secretariats but emphasized the broader aspects of international labor relations. Its leadership was closely allied with that of the Second International and therefore it was involved in some of the same problems of policy, such as the relation of trade-unions to the socialist parties, the type of unionism to be preferred, radical or reform, and the position of unions in time of war. Considerable discussion took place over the feasibility of calling a general strike to prevent prosecution of a war.

Like the Second International, it too was caught in the maelstrom of the World War and fell victim to the nationalism of its constituent bodies. Its leading figure had been Karl Legien of the German Federation of Trades Unions. At the outbreak of the War there was agitation for a general strike which came to nothing. Legien turned over his office to Oudegeest, leader of the Dutch trade-unions. Later there were personal recriminations between

the leaders of the labor groups of the belligerent countries regarding the responsibility for the inaction.

At the end of the War, the Federation was reconstituted with difficulty, as some of the leaders refused to traffic with representatives of the enemy countries while others insisted that all members must come in on the same footing. Following the immediate postwar period, however, it gained some of its lost prestige.

RED INTERNATIONAL OF LABOR UNIONS

Since the predominant philosophy of the International Federation of Trade Unions was Socialist, the question arose in the ranks of the Third International as to its relation to trade-unions. A trade-union Congress was held in Moscow in 1921 to consider the problem. Part of the delegates favored breaking up the existing unions and organizing new ones on a frankly communist basis. This was voted down in favor of the plan of boring from within and capturing the old organizations. Another problem was the relation of the unions to the Third International. Some delegates favored one International for both political parties and unions, but this was not acceptable to others. As a kind of compromise measure, it was decided to organize a separate International for the trade-unions, with an interlocking directorate with the Third International. This was named the Red International of Labor Unions. It maintained an existence throughout the 1920's, but the communist groups organized very few unions outside Russia. It has practically ceased its activity following developments in the Third International since 1935.

THE CHRISTIAN INTERNATIONAL

The Christian unions, organized after the Encyclical of Pope Leo XIII in 1891 among workers in those countries having a large Catholic population, began coming together in trade sections in 1900. In 1908 an international conference of Christian unions was held at which a general international association was set up. After heated controversy it was decided that it should be interdenominational and not limited to Catholic members. The Christian unions numbered about half a million members in the prewar period, most of them in parts of Germany, in Belgium, Austria, and Switzerland, but their international association was of little significance.

THE INTERNATIONAL LABOR ORGANIZATION

The International Labor Organization of the League of Nations is not exactly comparable to the exclusively labor internationals discussed above,

but it has exerted an influence on the international relations of labor in the postwar period. Membership in the I.L.O. is not confined to those groups in the League of Nations, but its work is tied up with that of the League.

During the negotiation of the peace treaty, the International Federation of Trade Unions exerted pressure for the establishment of a labor body empowered to pass regulations binding on the national members. That effort was not successful, and the I.L.O. is a type of compromise. The work of the I.L.O. is threefold: (1) Annual conferences of national representatives from employer and worker associations and governments are held. At these conferences Draft Conventions are passed. These are proposals on labor and social matters. The parliament of any country is free to accept or reject any Draft Convention. If it accepts it, then it must introduce proper legislation to put it into effect. (2) The International Labor Office carries on continuous work, being responsible for calling the general conferences, for preparing materials for the Draft Conventions, and administering the relations between the national groups. It has a permanent research and executive staff for these purposes. (3) Members of the I.L.O. may also elect those who serve on the governing body, the highest executive group in the organization.

The International Federation of Trade Unions is the labor group in closest contact with the I.L.O. It has had some controversy with the I.L.O. since the beginning, but it continues to look to it as an aid in research, as a means of disseminating information and of making contacts in distant countries. The most serious conflict has come over the issue of the presence of fascist labor representatives in I.L.O. bodies, the I.L.O. maintaining a neutral attitude to all factions.

The breakup of the political alignments in Europe set up by the Versailles Treaty has so weakened the League of Nations that the future of the I.L.O. is uncertain as a continuous avenue of international labor connections.

AMERICAN LABOR AND INTERNATIONAL RELATIONS

The American labor movement has been isolated geographically from the centers of interest in international labor affairs. It has been preoccupied with its own problems, which it believed to be peculiar to the American scene. Nevertheless, it has been affected by the efforts to consolidate international bonds and at times has seemed about to take a significant part.

The migrations of workers, especially after 1848, brought a number to America who had been a part of the political movements in their home countries. In the 1860's the National Labor Union established international connections and voted to send a delegate to the 1869 Congress of the First In-

ternational. There was insufficient interest, however, to nourish the International when it was centered in New York.

The socialist parties and later the communists have been affiliated with the Internationals of their faith, but these have not touched large numbers of American wage earners.

It is through the international organizations of trade-unions that the more significant ties have been made. The American Federation of Labor, inheriting the earlier tradition of international connections from its predecessors, established relations with British and French unions. On the basis of its expressed interest it was invited to participate in the international conference meeting in Paris in 1889. Financial consideration made the sending of delegates impossible, but fraternal greetings were exchanged. A plea sent for co-operation in the eight-hour movement was indirectly responsible for the establishment of the first of May as the international labor holiday. Samuel Gompers continued to express interest, but subsequent controversies between him and the socialists, in which the international groups sided with the latter, turned him from the political groups. He began urging the establishment of a purely trade-union international to counteract the influence of the socialists. Failing in this, his interest continued to find expression through correspondence and occasional collection of strike funds but resulted in no formal affiliation for some years.

More active interest was evident in the decade before the World War. Increasing immigration of European workers to the United States was one reason for renewed interest. The trade-union internationals had been set up in Europe and were making headway. Also, growing apprehension of war gave impetus to the movement for peace through labor co-operation. The A.F.L. encouraged its member unions to develop international connections, and a number of them joined the secretariats of their trades. After discussion of affiliation with the International Secretariat of Trade Union Centers, Gompers attended the 1909 Conference in Paris. Although he had some misgivings, his recommendation for affiliation was voted on favorably by the A.F.L. in 1910.

The A.F.L. in the International. The relationship was not an altogether happy one. Most of the European trade-union movements were built on radical political philosophies. Gompers was suspicious of socialists and syndicalists on the ground that they were destroyers of trade-unions. He attempted unsuccessfully to prevent the International from dealing with political issues of any sort. There was a running controversy over the problem of the autonomy of the national groups and over whether or not decisions should be held binding only after a unanimous vote. British and American

delegates objected to the method of applying the per capita tax on member organizations; since as the largest they bore most of the financial burden, they urged its reduction. Gompers advocated dropping the term "secretariat," which he said carried no meaning to American workers, and changing the title to the International Federation of Trade Unions.

During the World War period and the years immediately following Gompers believed it possible that labor's "great mission" would be performed by efforts to effect peace. His theories for attaining his end were not those of the socialists in Europe, but were rather general ideals of promoting "everlasting peace and brotherhood." He took the lead in a series of efforts to bring the labor forces of the world together through reviving the International Federation of Trade Unions. Some of them insisted that German workers be included also. The ancient differences of opinion arose over basic economic and political philosophy, a situation made more acute by the events of the Russian Revolution and the subsequent splits among the socialists. From a distance the leaders in the A.F.L. failed to distinguish between socialists and communists. After considerable efforts on the part of the International Federation to heal the breach, the A.F.L. announced its withdrawal in 1921. It did not reaffiliate until 1937.

Other international relations. In the meantime Gompers had played an important part in the establishment of the International Labor Organization. Although he was disillusioned with the International Federation, he was still interested in wider connections and made unsuccessful overtures for the purpose of interesting British union leaders in an English-speaking organization. He reached out also to renew contacts with South American labor groups looking towards the establishment of a "labor Monroe Doctrine," through the Pan-American Federation of Labor. Many of these groups were influenced by socialists and syndicalist philosophies, but Gompers managed to steer a middle course with them. With the possible exception of Mexico, the relations were tenuous and relatively unimportant. Following the death of Gompers, who was stricken by his last illness as he was returning from a visit to Mexico, little was done to continue the contacts there. In 1938 the Congress of Industrial Organizations, through its chief, John L. Lewis, picked up the lost connection with the Mexican labor movement.

It is clear from this account that organized labor in the United States has had continuous and at times important relations with labor groups in other countries. However, most of the contacts have been maintained through the upper ranks of leadership. The average member of an American union has probably been unaware of the structural ties which his organization may have maintained. Broad resolutions are passed at conventions, and occa-

sionally money is collected. Many unions and unionists have contributed money to the funds for assisting trade-unionists who are victims of fascist persecutions, but all this is hardly sufficient to break down the isolationist position of the bulk of American labor.

INTERNATIONAL LABOR AT AN IMPASSE

The development of fascism struck labor's international institutions a blow more serious than that administered in 1914 by the World War, when both trade-union and socialist organizations disintegrated. Among the first principles of fascist philosophy are nationalism and militarism, both inconsistent with the traditions of labor internationalism. Internally, fascism results in the destruction of labor institutions, and a subordination of wage earners to the interests of the State. Historically, the German labor organizations were the most active and interested groups in the Internationals. Their collapse following the success of Hitler in 1933 caused consternation among their associates in international labor relations. What little remained of virile international connections among labor organizations suffered anew at the precipitation of war in Europe in 1939. While minorities have protested and urged the speedy end of hostilities, most labor groups have been willing to follow the lead of their governments. Nations at war with each other offer dreary prospects for the practices of international labor fraternity.

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QUESTIONS

1. What prompted the organization of labor internationals?
2. How do you explain the fact that the European trade-union movements took a more active part in the Internationals than did the American movement?
3. What are the limits of internationalism when it comes into conflict with nationalism?
4. Explain the conflicts over policy and philosophy which led to the downfall of the First International.
5. Outline the work of the I.L.O. What are its contributions to international labor relations?
6. Representatives of fascist labor organizations are not permitted to sit with the labor delegations at I.L.O. meetings. What is the reason for this?
7. Why were the Christian unions brought into an international organization? What has been their influence?
8. What is the likelihood of success of labor internationalism in the face of nationalism in the political field?

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